FILED
United States Court of Appeals
Tenth Circuit

October 5, 2023

Christopher M. Wolpert
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

NANA AMARTEY BAIDOOBONSO-IAM, a/k/a Nana I Am, a/k/a Nana A Iam, a/k/a Nana Amartey Baidoobonsoiam, a/k/a Nana Baidobonsoiam,

Defendant - Appellant.

No. 22-3121
(D.C. No. 6:19-CR-10127-EFM-2)
(D. Kan.)

ORDER AND JUDGMENT[*]

Before **TYMKOVICH**, **BRISCOE**, and **MORITZ**, Circuit Judges.

Defendant Nana Amartey Baidoobonso-Iam (Iam) was convicted by a jury of one count of mail fraud, in violation 18 U.S.C. §§ 1341 and 2, and one count of making a false declaration and statement under penalty of perjury in relation to a bankruptcy case, in violation of 18 U.S.C. §§ 152(3) and 2. Both charges arose out of Iam's filing of an involuntary bankruptcy petition in the District of Kansas against a California attorney. The district court sentenced Iam to a term of imprisonment of thirty-six months, to be followed by a three-year term of supervised release.

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[*] This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

Iam now appeals his convictions. He argues that the district court erred in denying his proffered instruction on wrongful foreclosure law in California, and in excluding the testimony of Iam's proffered expert witness. Exercising jurisdiction pursuant to 28 U.S.C. § 1291, we reject Iam's arguments and affirm his convictions.

I

Factual background

a) The defendant

Iam is a native of Ghana who came to the United States in 1973 when he was eleven years old.[1] In approximately 2010, Iam allegedly began to educate himself about real estate bankruptcies and mortgage-backed securities. In doing so, Iam attended seminars and read books about foreclosures, and also "started surfing the internet . . . for foreclosure preventions." ROA, Vol. 3 at 432. Based upon this self-education, Iam then began assisting homeowners who were struggling with their mortgages.

b) The Whittier Property and the related Note

On August 1, 2005, Gladys D. Gonzalez and her then-husband, Jose R. Velasquez, purchased a residential property located in Whittier, California (the Whittier Property). Gonzalez and Velasquez purchased the Whittier Property for

[1] Iam applied for United States citizenship in 1995, but that application was denied due to Iam's prior fraudulent claims that he was a United States citizen. On August 19, 2019, Iam was ordered deported. That order has apparently been suspended pending the outcome of this criminal appeal.

$646,400 by signing a Note (the Note) and Deed of Trust dated August 1, 2005. The lender on the Note was Aegis Wholesale Corporation (Aegis).

By way of various endorsements and assignments, U.S. Bank National Association, solely as Trustee for Harborview 2005-13 (U.S. Bank), became the owner of the Note. Nationstar Mortgage (Nationstar) was the servicer of the Note.

At some point, Gonzalez and Velasquez began having trouble making their payments on the Note. Starting in 2008, Gonzalez attempted to have the Note modified. In approximately 2009, Gonzalez stopped making payments on the Note. In 2011, Gonzalez and Velasquez divorced and Velasquez assigned all of his interest in the Whittier Property to Gonzalez. Gonzalez continued, after the divorce, to attempt to have the Note modified.

On June 23, 2016, Alan Steven Wolf (Wolf), an attorney licensed in California, and his law firm, The Wolf Firm (TWF), filed a Notice of Default that evidenced arrears of over $360,000 on the Note. On December 16, 2016, Wolf and TWF recorded a Notice of Sale relating to the Whittier Property.

c) Iam's purported efforts to assist Gonzalez

At some point in 2016 after Wolf and TWF filed the Notice of Default, Gonzalez was introduced by one of her neighbors to Iam. Gonzalez's neighbor told Gonzalez that Iam "was really good helping with everything she asked him to do on mortgages." *Id.* at 333. Gonzalez's understanding was that Iam was going to help her save her house from foreclosure. According to Gonzalez, her plan was to try to

modify the Note and then sell the Whittier Property so that she would have money to live someplace less expensive.

Iam purportedly obtained all of the records relating to the Whittier Property and then reviewed them to investigate the chain of title. Iam allegedly concluded that an assignment of the mortgage and Note that occurred in 2011—from an entity called MERS to Aegis—was in violation of New York trust law. Iam in turn allegedly concluded that this violation of New York trust law rendered the assignment, as well as any assignments thereafter, "unenforceable, null and void." *Id*. at 441. Iam also allegedly concluded that there were irregularities in the amount that Wolf and TWF were alleging was due in the notice of trustee sale.

Following his investigation into the records of the Whittier Property, Iam prepared numerous documents for Gonzalez to sign. According to Gonzalez, she signed the documents that Iam presented to her, but she did not read those documents because she trusted Iam.

The first document that Iam had Gonzalez sign was a California All Purpose Certificate of Acknowledgment and Demand for Beneficiary Statement dated September 8, 2016. Iam then served a copy of that document on TWF. Although the Demand for Beneficiary Statement was untimely under California law, TWF nevertheless forwarded the document to Nationstar, the servicer of the Note, and Nationstar responded by mailing Gonzalez a beneficiary statement.

In December 2016 or January 2017, Iam, purportedly acting on Gonzalez's behalf, mailed to TWF a second copy of the Demand for Beneficiary Statement and a

new document titled Affidavit Rebutting Trustee's Sale and Other Documents. TWF forwarded these documents to Nationstar.

At some point during the course of their relationship, Iam had Gonzalez sign a document titled Short Form Deed of Trust and Assignment of Rents (Short Form Deed of Trust). Notably, this Short Form Deed of Trust was dated August 1, 2012, approximately four years before Gonzalez met Iam. The Short Form Deed of Trust referred to a promissory note in the amount of $250,000 that Gonzalez executed in favor of Iam.[2] Gonzalez, however, never received any amount of money from Iam, nor did she ever promise to pay Iam the sum of $250,000. The Short Form Deed of Trust also stated that Gonzalez had assigned Iam a $250,000 interest in the Whittier Property. Gonzalez, however, never told Iam that he could have any interest in the Whittier Property. According to Gonzalez, she would never have signed the Short Form Deed of Trust if she had known that it purported to give Iam an interest in her property. Iam caused the Short Form Deed of Trust to be recorded in the official recorder's office for Los Angeles County, California, on November 22, 2017. As a result of this event, Iam was recorded as a junior beneficiary on the Note.

On June 30, 2017, Iam initiated a civil action on behalf of Gonzalez and himself in the United States District Court for the Central District of California by filing a "Petition for a Verfication [sic] of Debt Else Release of Claim" against Wolf,

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[2] The Short Form Deed of Trust also identified an entity called Homeowner's Equity Partnership Trust, with a business address located in Beverly Hills, California, as a beneficiary (in addition to Iam). ROA, Vol. 3 at 182. Gonzalez was not familiar with this entity.

U.S. Bank, and Nationstar. *Id.*, Vol. 2 at 11. The petition purported to challenge the validity of the foreclosure debt on the Whittier Property and also questioned the ownership of the Note and Deed of Trust on the Whittier Property. Although Gonzalez signed the petition, she never read it and did not authorize Iam to file a lawsuit on her behalf. Further, Gonzalez had no knowledge that Iam actually filed the petition. According to Iam, his sole purpose in filing this lawsuit was to force the defendants to provide him with accounting information explaining the chain of title to the Whittier Property. In other words, Iam alleges that he was simply seeking to have the named defendants "verify the debt." *Id.*, Vol. 3 at 511. The named defendants moved to dismiss the action. On November 14, 2017, the district court granted the defendants' motion and dismissed the case with prejudice.

d) Iam's filing of the involuntary bankruptcy petition against Wolf

On January 4, 2018, TWF conducted a foreclosure sale of the Whittier Property. One day later, on January 5, 2018, Iam filed in the United States Bankruptcy Court for the District of Kansas an involuntary Chapter 7 bankruptcy petition against Wolf. The petition listed a Hillsboro, Kansas, post office box for Iam, but the envelope that the petition was mailed in indicated that it was mailed from Downey, California, on January 4, 2018. The petition alleged that Wolf resided and did business in California, but it requested venue in Kansas for "diversity" purposes. *Id.*, Vol. 2 at 11.

The petition identified Iam and Gonzalez as creditors of Wolf.[3] More specifically, the petition alleged that Wolf owed $1,260,000 to Gonzalez and $630,000 to Iam. In fact, however, Wolf owed nothing to either Gonzalez or Iam on the date the petition was filed. Moreover, Iam had never served Wolf with a letter threatening to sue Wolf, had never actually sued Wolf, and in turn had never received a liquidated judgment against Wolf.

Iam checked a box on the petition that alleged that Wolf was generally not paying his debts as they became due. It is undisputed, however, that Wolf was timely on all of his debts and had never, at any point in his adult life, failed to pay his debts as they became due.

Wolf hired a Kansas law firm to represent him in the bankruptcy proceedings, and that firm immediately filed a motion to dismiss the case, as well as a motion to seal the proceedings so that Wolf's clients would not learn of the proceeding. Iam, purportedly on behalf of himself and Gonzalez, filed an opposition to the motion to dismiss. The opposition brief claimed that Wolf had fraudulently foreclosed on the Whittier Property and had failed to provide proof that U.S. Bank was the owner of the loan. The opposition brief "contained language commonly used by individuals claiming to be Sovereign Citizens." *Id.*, Vol. 2 at 12.

On February 27, 2018, the bankruptcy court dismissed the petition. In doing so, the bankruptcy court concluded that the petition was defective because the court

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[3] The petition was signed by both Iam and Gonzalez. According to Gonzalez, however, she never read the petition and was unaware of its contents or filing.

lacked jurisdiction over Wolf and because the petition failed to list the minimum three creditors required for the filing of such an action. The bankruptcy court further concluded that there was no evidence of any debt owed by Wolf to Gonzalez or Iam. The bankruptcy court also found that the petition was filed for an improper purpose and contained materially false and fraudulent statements.

Procedural history

On September 4, 2019, a federal grand jury returned a four-count indictment charging Gonzalez and Iam with (1) conspiracy to commit mail fraud, in violation of 18 U.S.C. §§ 1349 and 1341, (2) mail fraud, in violation of 18 U.S.C. §§ 1341 and 2, (3) filing a fraudulent involuntary bankruptcy petition against an individual, in violation of 18 U.S.C. §§ 157(1) and 2, and (4) making a false declaration and statement under penalty of perjury in relation to a bankruptcy case, in violation of 18 U.S.C. §§ 152(3) and 2.

On March 13, 2020, a writ of habeas corpus ad prosequendum was issued for Iam because he was in the custody of a correctional facility in Castaic, California. On June 12, 2020, Iam was arrested on the federal charges and transferred to federal custody.

On May 26, 2021, a federal grand jury returned a superseding two-count indictment charging Iam with (1) mail fraud, in violation 18 U.S.C. §§ 1341 and 2, and (2) making a false declaration and statement under penalty of perjury in relation to a bankruptcy case, in violation of 18 U.S.C. §§ 152(3) and 2.

Prior to trial, Iam filed a designation and summary of expert testimony for his proposed expert witness, Lawrence Asuncion. Iam alleged in the designation:

> Mr. Asuncion will testify about the failed securitization of the mortgage loan originated August 1, 2005 for Gladys D. Gonzalez and Jose R. Velasquez, borrowers and purchasers of 4326 Mountain Shadows, Whittier, California 90601 ("the Whittier Property"), violations of the securitization agreements for the pooling of the Whittier Property loan with other loans ultimately transferred into Harborview Mortgage Loan trust 2005-13, the broken chain of title for the Deed of Trust given by Gonzalez and Velasquez to Aegis Wholesale Corporation, the false and invalid assignments of the Deed of Trust, the invalid notices of default and trustee's sale of the Whittier Property, and the Mortgagor's (Trustee's) lack of standing in the mortgage securitization. * * *
>
> Mr. Asuncion's opinions concerning the Adjustable Rate Note for the Whittier Property ("the Note") are [that] . . . the Note was not properly endorsed from one lender to the next or to the Trustee for Harborview Mortgage Loan Trust 2005-13 and the Trustee did not have a legal right to enforce the Note or foreclose on the Deed of Trust.
>
> Mr. Asuncion may also testify as a lay witness concerning his personal first-hand knowledge of the defendant and the defendant's experience with securitization practices and processes.

Id., Vol. 1 at 97–98.

The government responded by filing a motion for a *Daubert* hearing "regarding the anticipated testimony of the defendant's identified expert, Lawrence Asuncion." *Id*. at 724. The government argued in its motion that the district court "should prohibit the testimony of . . . Asuncion" because his proposed expert testimony was "not relevant," Asuncion "d[id] not have the necessary qualifications to testify as an expert," "Asunsion's report and testimony w[ould] not assist the jury in understanding whether [Iam's] representations regarding . . . Wolf were knowing and material," and Asuncion's "report [wa]s not reliable." *Id*. at 725. On November

2, 2021, Iam filed a response "agree[ing] that the [district court] should schedule a *Daubert* hearing regarding . . . Asuncion's opinions, qualifications and the bases of his opinions." *Id*. at 811.

The district court held a *Daubert* hearing, at which Asuncion testified under oath. Following the hearing, the district court issued a memorandum and order granting the government's motion to exclude the proposed expert testimony of Asuncion. The district court "conclude[d] [Iam] ha[d] not shown that . . . Asuncion [wa]s qualified by knowledge, experience, training, or education to express opinions on the legal validity or invalidity of transfers of interest of the Whittier Property mortgage or note, or to express legal opinions about which persons or entities do or do not hold enforceable interests in the property" and thus "[h]is testimony [wa]s excludable on that basis alone." *Id*. at 867. The district court also concluded that "[e]ven if [it] determined that . . . Asuncion's experience and self-study of mortgage securitization provided a sufficient basis for offering such opinions, no showing ha[d] been made that [his] opinions [we]re the product of a reliable method." *Id*. Further, the district court concluded that "there [wa]s a substantial disconnect between the issues the jury w[ould] have to decide and . . . Asuncion's opinions about securitization of the Whittier Property mortgage." *Id*. at 871. Lastly, the district concluded that "Asuncion's opinions include[d] so many unsupported and confusing assertions that his testimony would result in confusion of the issues and undue delay, which would substantially outweigh any possible probative value of the testimony."

Id. Thus, the district court concluded that "even if this evidence were not excluded under Rule 702, it would be excluded under Rule 403." *Id*.

The case proceeded to trial on March 14, 2022. The government presented testimony from five witnesses, including Wolf and Gonzalez. Iam testified in his own defense. According to Iam, he filed the involuntary bankruptcy petition against Wolf in order to litigate his claim for wrongful foreclosure against Wolf. Iam admitted that, at the time he filed the involuntary petition, Wolf did not owe money to him or Gonzalez. At the conclusion of all the evidence, Iam moved for judgment of acquittal. The district court denied that motion. The jury then deliberated and found Iam guilty of both charges alleged in the superseding indictment.

The district court held a sentencing hearing on June 23, 2022. The district court calculated a total offense level of 25, a criminal history category of II, and a resulting advisory Guidelines sentencing range of 63 to 78 months. The district court chose, however, to vary downward from the advisory Guidelines sentencing range and sentenced Iam to a term of imprisonment of thirty-six months, to be followed by a three-year term of supervised release. The district court also ordered Iam to pay restitution to Wolf in the amount of $3,075.50.

Judgment was entered in the case on June 24, 2022. Iam filed a timely notice of appeal.

II

Iam asserts two issues on appeal. First, he argues that the district court erred in rejecting his proffered jury instruction regarding wrongful foreclosure claims in

the State of California and his purported belief that he had a wrongful foreclosure claim against Wolf. Second, he argues that the district court erred in excluding the testimony of his proffered expert witness. For the reasons that follow, we reject both of these arguments.

Did the district court err in rejecting Iam's proffered jury instruction regarding wrongful foreclosure claims?

Iam argues in his first issue on appeal that the district court erred in rejecting three of his proffered jury instructions. Iam notes in support that his "good faith defense was predicated on his honest belief that the trustee, without legal title, acting by and through its attorneys, [Wolf and his law firm], did not have standing to foreclose on the Whittier Property." Aplt. Br. at 26–27. Iam in turn asserts that his proffered instructions "went to his reasoning and state of mind when he filed the involuntary bankruptcy petition against Wolf." *Id*. at 26. Specifically, he notes that his proffered "wrongful foreclosure instruction stated he claimed that Gonzalez and he, by virtue of his beneficial interest" in the Whittier Property, "had a cause of action for wrongful foreclosure because the assignment of the deed of trust to Harborview was void." *Id*. He also notes that "[t]he requested instruction informed the jury that California judicial law permits a borrower in limited circumstances to bring a wrongful foreclosure action against a party who does not possess a proper chain of title to the property." *Id*. Iam asserts that "[h]is beliefs were relevant to the elements of intent to defraud in Count 1 and knowingly making a false statement in Count 2." *Id*.

a) Standard of review

"[W]e review the district court's refusal to give requested instructions for abuse of discretion." *United States v. Cushing*, 10 F.3d 1055, 1073 (10th Cir. 2021) (alterations and internal quotation marks omitted). But we "review[] the jury instructions de novo in the context of the entire trial to determine if they accurately state the governing law and provide the jury with an accurate understanding of the relevant legal standards and factual issues in the case." *United States v. Jean-Pierre*, 1 F.4th 836, 846 (10th Cir. 2021) (alterations and internal quotation marks omitted). "[A] defendant is entitled to an instruction on any recognized defense for which there is evidence sufficient for a reasonable jury to find in his favor." *United States v. Toledo*, 739 F.3d 562, 567 (10th Cir. 2014). "For the purposes of determining the sufficiency of the evidence, we accept the testimony most favorable to the defendant." *Id*. In addition, "when deciding whether the evidence supports a particular jury instruction, a court must give full credence to the defendant's testimony." *Id*. (internal quotation marks and brackets omitted). And "though a defendant's testimony may be contradicted to some degree by other evidence or even by his prior statements, a defendant is entitled to an instruction if the evidence viewed in his favor could support the defense." *Id*. at 568.

b) Procedural history relevant to the claim

Approximately two weeks prior to trial, Iam's counsel filed a pleading titled "DEFENDANT'S REQUESTED JURY INSTRUCTIONS." ROA, Vol. 1 at 873. The pleading stated that Iam was "request[ing] the following stock Tenth Circuit

Pattern Jury Instructions: No. 1 Knowingly – Deliberate Ignorance - § 1.37." *Id*. The pleading further stated, in relevant part, that Iam was "request[ing] [six] special instructions based on the facts of the case and the defendant's theory of defense." *Id*. Attached to the pleading were copies of each of the proposed instructions.

Included among the six special instructions submitted by Iam were the following three instructions:

Defendant's No. 7

WRONGFUL FORECLOSURE CLAIM

> The defendant, Nana Amartey Baidoobonso I-Am, claims that Gladys Gonzalez and the defendant, by virtue of his beneficial interest, had a cause of action for wrongful foreclosure of the Deed of Trust granted against the Home because the assignment of the Deed of Trust to Harborview Mortgage Loan Trust 2005-13, Mortgage Loan Pass-Through Certificates, Series 2005-13, U.S. Bank National Association, Trustee (U.S. Bank), was void.
>
> You are instructed that California judicial law, that is law decided by a court, in this case the California Supreme Court, permits a borrower in limited circumstances to bring a wrongful foreclosure action against a party who does not possess a proper chain of title to the property. In a nonjudicial foreclosure, only the original beneficiary of a deed of trust or its assignee or agent may direct the trustee to sell the property. An allegation that the assignment was void, and not merely voidable at the behest of the parties to the assignment, will support an action for wrongful foreclosure.
>
> It is for you to decide from all the evidence presented in this trial whether the defendant had a good faith belief that he had an action for wrongful foreclosure against Alan Steven Wolf.
>
> *Yvanova v. New Century Mortg. Corp.*, 62 Cal. 4th 919, 930 n.5, 365 P.3d 845, 852 (2016)

Defendant's No. 8

GOOD FAITH DEFENSE – MAIL FRAUD

The good faith of the Defendant Nana Amartey Baidoobonso I-Am is a complete defense to the charge of mail fraud in Count 1 of the indictment because good faith on the part of the defendant is, simply, inconsistent with a finding of acting with specific intent to defraud or employing false or fraudulent pretenses or representations as alleged in that charge.

A person who acts on a belief or an opinion honestly held is not punishable under this statute merely because the belief or opinion turns out to be inaccurate, incorrect, or wrong. An honest mistake in judgment or an error in management does not rise to the level of knowledge and specific intent required by the statute.

This law is intended to subject to criminal punishment only those people who knowingly and intentionally attempt to defraud. While the term good faith has no precise definition, it means, among other things, a belief or opinion honestly held, an absence of malice or ill will, and an intention to comply with known legal duties.

In determining whether or not the government has proven that the Defendant Nana Amartey Baidoobonso I-Am acted in good faith or acted with specific intent to defraud by employing false or fraudulent pretenses or representations, you must consider all of the evidence in the case bearing on the defendant's state of mind.

The burden of proving good faith does not rest with the defendant because the defendant does not have an obligation to prove anything in this case. It is the government's burden to prove to you, beyond a reasonable doubt, that the Defendant Nana Amartey Baidoobonso I-Am acted with specific intent to defraud by employing false or fraudulent pretenses or representations.

If the evidence in the case leaves you with a reasonable doubt as to whether Defendant Nana Amartey Baidoobonso I-Am acted in good faith, you must acquit him.

2A Fed. Jury Prac. & Instr. § 40:16 (6th ed.)

Defendant's No. 9

GOOD FAITH DEFENSE – BANKRUPTCY FALSE STATEMENT

The good faith of the Defendant Nana Amartey Baidoobonso I-Am is a complete defense to the charges in Count 2 of the indictment because good faith on the part of the defendant is, simply, inconsistent with a finding of knowingly and fraudulently making a false declaration or statement in bankruptcy as alleged in that charge.

A person who acts on a belief or an opinion honestly held is not punishable under the false statement statute merely because the belief or opinion turns out to be inaccurate, incorrect, or wrong. An honest mistake in judgment or an error in management does not rise to the level of knowingly and fraudulently making a false declaration or statement in a bankruptcy proceeding as required by the statute.

This law is intended to subject to criminal punishment only those people who knowingly and fraudulently make a false declaration or statement under penalty of perjury. While the term good faith has no precise definition, it means, among other things, a belief or opinion honestly held, an absence of malice of ill will, and an intention to comply with known legal duties.

In determining whether or not the government has proven that Defendant Nana Amartey Baidoobonso I-Am acted in good faith or acted knowingly and fraudulently in making a false declaration or statement in bankruptcy, you must consider all of the evidence in the case bearing on the defendant's state of mind.

The burden of proving good faith does not rest with the defendant because the defendant does not have an obligation to prove anything in this case. It is the government's burden to prove to you, beyond a reasonable doubt, that Defendant Nana Amartey Baidoobonso I-Am knowingly and fraudulently made a false declaration or statement in bankruptcy.

If the evidence in the case leaves you with a reasonable doubt as to whether Defendant Nana Amartey Baidoobonso I-Am acted in good faith, you must acquit him.

2A Fed. Jury Prac. & Instr. § 40:16 (6th ed.) modified.

Id. at 884–886.

During a break on the second day of trial, the district court and the parties briefly discussed Iam's proposed instructions. During that discussion, the district court noted, in relevant part, "[t]hat the good faith exception or defense only applies if there's good faith as to all the elements of the crime charged and that includes not only that . . . Iam believed that the Ninth Judicial foreclosure was wrongful, but that he had good faith basis to believe that there was a debt owed to he and . . . Gonzalez." ROA, Vol. 3 at 240–41. The district court further noted that it was "not inclined to give" Iam's proposed good faith instruction "but [would] wait until the close of all evidence to decide whether or not to include it." *Id*. at 241.

At the conclusion of all the evidence, the district court held an instruction conference and noted at the outset that it still had to decide on "the good faith instruction proposed by" Iam. *Id*. at 610. In discussing that issue, the district court noted:

> This case is not about the foreclosure on Gladys' property. And if the jury is not confused on that, I will be astonished because that's all we've talked about for the last day. But it's not about whether or not the foreclosure was appropriate, or justified, or reasonable, there are no claims in this case, and there are no instructions in the instruction form, and there's nothing in the verdict form that talked about whether or not whoever had the right to foreclose on Gladys Gonzalez's property in California, and we have had a lot of confusion about that.
>
> The case is about whether Mr. Wolf owed this roughly $2 million to Mr. Iam and Ms. Gonzalez and whether he was not paying his debts. Whether those statements were false and knowingly false and that's all it's about.

> So I say that, first, to caption our discussion on the good faith instruction and then, secondly, to urge, to plead, to beg that your closing arguments limit yourselves to the crimes raised in the indictment. I don't care and the pleadings in this case don't care whether the foreclosure was proper or not.
>
> Let me make one other comment in that regard. My impression initially was that the relevance of the foreclosure was that because Mr. Iam alleged that the foreclosure was improper, he alleged that he had a debt owing he and Ms. Gonzalez from that department foreclosure and, in fact, it occurred to me the debt was set out in the petition he filed in the Central District of California but Mr. Iam testified yesterday with respect to that petition, which was dismissed with prejudice, that, no, I was not filing that to make a claim, I was filing that to demand that they show proof as to how they could foreclose, and notwithstanding that paragraph that was just up on the exhibit that totalled [sic] $200,000, Mr. Iam I believe testified twice yesterday that he was not filing that to make a claim and then this morning he did that on cross-examination, and this morning he admitted to his attorney on redirect that that was not seeking damages for wrongful foreclosure because at the time he filed that, no foreclosure, wrongful or otherwise, had occurred.
>
> So given that, I am mystified as to the connection between the foreclosure activities, which we've all had a little glimmer on California foreclosure, and the claims in this case.
>
> So in that context, let's start by talking about the good faith issue but the good faith we need to talk about, [defense counsel], is not whether Mr. Iam had a good faith belief that the foreclosure was wrongful. It's whether he had a good faith belief that Mr. Wolf owed this money.

Id. at 611–13.

Defense counsel asserted in response that Iam "in his mind" believed that under California law he and Gonzalez had a valid claim of wrongful foreclosure against Wolf and his law firm. *Id*. at 616. The district court responded that Iam "m[ight] think he has a claim for wrongful foreclosure," but "[w]e're not going to talk about that" because "[t]his is not a case about wrongful foreclosure." *Id*. The

district court further stated: "We are going to talk about whether he had a claim against Mr. Wolf for $2 million, and on behalf of he and Ms. Gonzalez, and when he filed this involuntary [bankruptcy] petition he had never made that claim" against Wolf. *Id*. Defense counsel stated in response that "the day he filed the [involuntary bankruptcy] petition [Iam] thought he could litigate that claim [against Wolf] through the bankruptcy court and he testified yesterday he knows now that's not correct but that is what he thought at the time when he filed the petition." *Id*. at 617. The district court responded:

> So is it a good faith defense to have made something up and never told anyone about it? I mean that's what he did. He made this up, and he never filed any claim, never told anyone he had a claim, never made a demand for a claim, never sued for a claim, and then he told the bankruptcy Court he had a claim. Does that really qualify as a good faith dispute?

Id. Defense counsel stated in response that "[i]t's his state of mind and his intent" and "[t]he jury has to decide whether he had an intent to defraud" when he filed the involuntary bankruptcy petition. *Id*. Defense counsel further stated: "He—he thought if he had a bona fide dispute that's all he needed to check the box. He so testified." *Id*.

The district court and defense counsel continued briefly to discuss the question of whether Iam was asserting a valid good faith claim. Defense counsel then stated: "But if you will give the knowingly instruction, I don't need that good faith instruction." *Id*. at 619.

The district court continued to discuss Iam's proposed good faith defense and expressed skepticism about the defense due to Iam's statement under penalty of perjury in the involuntary bankruptcy that Wolf, the alleged debtor, was "generally not paying his debts." *Id*. at 620. The district court asked defense counsel: "did Mr. Iam have a good faith basis to believe that the debtor, Mr. Wolf, was not paying his debts when his debts had never been asserted against him?" *Id*. Defense counsel responded that Iam "testified he didn't even rely on that part of the sentence" in Paragraph 11 of the petition. *Id*. The district court stated in response: "Doesn't matter, he checked the box . . . [a]nd he signed it under [penalty of] perjury." *Id*.

After allowing government counsel to briefly respond regarding the proposed good faith instruction, the district court stated:

> The problem I'm struggling with is how Mr. Iam had a good faith basis to believe that Mr. Wolf is not paying his debts when those debts, which existed only in Mr. Iam's mind, had never been asserted against Mr. Wolf, he had never even had a demand to pay so how could he not generally be paying them? I don't know how we can get to a good faith basis on that.

Id. at 621. Ultimately, the district court ruled: "I'm not going to give the good faith instruction." *Id*. The district court then proceeded, with the agreement of both counsel, to "substitute the [Tenth Circuit] pattern instruction" on the "knowingly" element "for . . . the good faith instruction." *Id*. at 623.

In its instructions to the jury, the district court included the following:

> INSTRUCTION NO. 13
>
> When the word "knowingly" is used in these instructions, it means that the act was done voluntarily and intentionally, and not

because of mistake or accident. Although knowledge on the part of the defendant cannot be established merely by demonstrating that the defendant was negligent, careless, or foolish, knowledge can be inferred if the defendant deliberately blinded himself to the existence of a fact. Knowledge can be inferred if the defendant was aware of a high probability of the existence of a fact in question, unless the defendant did not actually believe the fact in question.

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INSTRUCTION NO. 15

You have heard some evidence in this case about a non-judicial foreclosure in California. It may help you in understanding the evidence to have a brief overview of California law on such foreclosures.

Under California law, a deed of trust to real property can be given as security for a loan. Such a transaction typically has three parties: the trustor (borrower), the beneficiary (lender), and the trustee. The trustee typically holds a power of sale under the terms of the deed of trust. If the borrower defaults on the loan, the beneficiary may demand that the trustee conduct a nonjudicial foreclosure sale—that is, a sale that does not require a court order.

If the sale is not postponed and the borrower does not exercise his or her rights of redemption, the property is sold at auction to the highest bidder. Generally, the foreclosure sale extinguishes the borrower's debt.

The trustee may act only at the direction of the entity that currently holds the note and beneficial interest under the deed of trust—the original beneficiary or its assignee—or that entity's agent. The deed of trust is negotiable, however, meaning the lender may sell and transfer it without notice to the borrower. If the borrower defaults on the loan, only the current beneficiary or their agent may direct the trustee to undertake the nonjudicial foreclosure process.

Id., Vol. 1 at 1022, 1024. The district court did not give the jury any of the other special instructions requested by Iam.

c) Analysis

In his opening appellate brief, Iam argues that he "was entitled to jury instructions supporting his [good faith] theory of defense." Aplt. Br. at 25. According to Iam, his "Requested Instructions Nos. 7, 8 and 9 set out a correct statement of California law for a wrongful foreclosure claim and a federal law good faith defense"[4] and thus "were relevant to [his] intent to defraud and whether he knowingly asserted false statements against . . . Wolf." *Id*. He also argues that these "instructions were supported by" his testimony because he "had an honest belief that he and Gonzalez possessed a claim." *Id*.

The government argues in response that Iam "abandoned, and therefore waived, his request for" a "good faith instruction" when his defense "counsel told the district court, 'if you will give the knowingly instruction, I don't need that good faith instruction.'" Aple. Br. at 19 (quoting ROA, Vol. 3 at 619 (emphasis omitted)). In other words, the government argues that this "amounted to a conditional abandonment of his request, with the condition being that the district court give the knowingly instruction, which he proffered, and which was materially similar in all respects both to the 2021 edition of Tenth Circuit Criminal Pattern Jury Instruction No. 1.37." *Id*.

Iam, in his appellate reply brief, changes course and argues that he is "not concerned in this appeal with the trial court's refusal to give [his] requested

[4] Iam has apparently abandoned any argument that the district court erred by failing to give his proffered instructions numbered 4, 5 and 6.

instructions No. 8 – Good Faith Defense – Mail Fraud and No. 9 – Good Faith Defense – Bankruptcy False statement." Aplt. Reply Br. at 1. Further, Iam "concedes" in his appellate reply brief "that he waived the good faith instructions when [his] defense counsel stated to the court, 'But if you will give the knowingly instruction, I don't need that good faith instruction.'" *Id*. Iam also argues in his appellate reply brief that he "did not waive or withdraw his request for Defendant's [Instruction] No. 7 – Wrongful Foreclosure Claim." *Id*. Iam argues that it was his "belief he had a meritorious civil claim as set out in Instruction No. 7." *Id*. And, he argues, "[t]his instruction would have given credibility to [his] theory of defense that his intent when he filed the bankruptcy petition was to pursue that claim against the debtor, Alan Steven Wolf." *Id*. at 2. Thus, in sum, Iam has, in his appellate reply brief, narrowed the focus of his appellate challenge to the district court's refusal to give his proposed Instruction No. 7.

We reject Iam's challenge to the district court's refusal to give his proposed Instruction No. 7. It is true, to be sure, that Iam testified in his own defense at trial and attempted to justify his filing of the involuntary bankruptcy petition as an honest, but misguided attempt on his part to litigate what he allegedly believed was a valid claim by him and Gonzalez against Wolf for wrongful foreclosure on the Whittier Property. In other words, Iam testified that he was trying to use the bankruptcy court in Kansas as the forum to litigate that wrongful foreclosure claim against Wolf. The problem, however, is that Iam conceded on cross-examination that, contrary to statements contained in the Short Form Deed of Trust, he never gave Gonzalez

$250,000, nor did he intend to do so. Thus, even assuming, for purposes of argument, that the jury could have believed Iam's testimony that Gonzalez actually signed the Short Form Deed of Trust on August 1, 2012, Iam's concession on cross-examination establishes that the Short Form Deed of Trust contained false information, thus seriously calling into question Iam's claim that Gonzalez transferred to him a $250,000 interest in the Whittier Property. And that in turn would mean that Gonzalez could not have believed in good faith that Iam personally had a claim against Wolf for wrongful foreclosure of the Whittier Property.

Perhaps more importantly, and as the district court noted during the instruction conference, the two criminal charges at issue in the case did not require the jury to make any findings regarding whether Iam reasonably believed that he had an action for wrongful foreclosure against Wolf under California law. Instead, Count 1 asked the jury to decide whether Iam (1) devised a scheme to defraud, (2) acted with specific intent to defraud, (3) mailed something, or caused another person to mail something (i.e., the involuntary bankruptcy petition), through the United States mail for the purpose of carrying out the scheme, and (4) employed false representations that were material in carrying out the scheme (i.e., the statements in the involuntary bankruptcy petition that Wolf owed sums of money to Gonzalez and Iam and was not generally paying his debts). ROA, Vol. 1 at 1018. As for Count 2, it asked the jury to decide, in relevant part, whether Iam (1) made a false declaration or statement in or in relation to a Chapter 11 bankruptcy proceeding (i.e., that Wolf owed sums of money to Gonzalez and Iam and was not generally paying his debts), (2) made the

false declaration or statement under penalty of perjury, (3) knew the declaration or statement was false, and (4) made the declaration or statement fraudulently. *Id*. at 1020. Thus, Iam's proposed Instruction No. 7 would have injected a factual issue into the case that was not relevant to either of the two criminal charges at issue.

We therefore conclude the district court did not err in refusing to give Iam's proposed Instruction No. 7.

Did the district court err in excluding the testimony of Iam's proffered expert witness?

In his second issue on appeal, Iam argues that the district court erred in excluding the testimony of his proposed expert witness, Lawrence Asuncion. According to Iam, Asuncion's testimony would have "confirm[ed] that [Iam's] honestly held beliefs about a broken chain of title were correct—U.S. Bank and its designees, TWF and Wolf, did not possess a proper chain of title or standing to foreclose on the Whittier Property." Aplt. Br. at 25.

a) Applicable law and standards of review

Federal Rule of Evidence 702 "governs the admissibility of expert opinion testimony." *United States v. Pehrson*, 65 F.4th 526, 540 (10th Cir. 2023). Rule 702 provides:

> A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if:
>
> (a) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;

(b) the testimony is based on sufficient facts or data;

(c) the testimony is the product of reliable principles and methods; and

(d) the expert has reliably applied the principles and methods to the facts of the case.

Fed. R. Evid. 702. Rule 702 thus "imposes on a district court a gatekeeper obligation to ensure that any and all scientific testimony or evidence admitted is not only relevant, but reliable." *Dodge v. Cotter Corp.*, 328 F.3d 1212, 1221 (10th Cir. 2003) (internal quotation marks omitted).

Although a "district court has discretion in *how* it conducts the gatekeeper function, we have recognized that [a district court] has no discretion to avoid performing the gatekeeper function." *Pehrson*, 65 F.4th at 541 (internal quotation marks omitted). "Therefore, we review de novo the question of whether the district court applied the proper standard and actually performed its gatekeeper role in the first instance." *Id*. (internal quotation marks omitted). "We then review the [district] court's actual application of the standard in deciding whether to admit or exclude an expert's testimony for abuse of discretion." *Id*. (internal quotation marks omitted). In doing so, "[w]e give the district court substantial deference, reversing only when its ruling was arbitrary, capricious, whimsical, or manifestly unreasonable or when it made a clear error of judgment or exceeded the bounds of permissible choice in the circumstances." *Id*. (internal quotation marks omitted).

b) The district court's decision regarding Asuncion's testimony

As we have noted, the district court held a *Daubert* hearing and heard testimony from Asuncion regarding his qualifications and opinions. Following the hearing, the district court issued a memorandum and order granting the government's motion to exclude Asuncion's proposed expert testimony. ROA, Vol. 1 at 855. The district court noted that Asuncion's resume was deficient because it: (1) stated that Asuncion held a degree in Economics, but did not specify where or when the degree was obtained; (2) stated that Asuncion had been active in foreclosure fraud investigation and examination of mortgage documents for more than six years, but did not specify the particular training that Asuncion had undergone to perform this work or the particulars of his work over that period; (3) did not describe any required training or governing standards for persons engaging in securitization audits or foreclosure fraud investigation; (4) stated that Asuncion had written and published a paper titled "Legal Standing in Foreclosure when the Underlying Mortgage was Securitized" that had been referred to by attorneys active in the field of mortgage foreclosure litigation, but did not state where the paper was published; and (5) cited several cases in which Asuncion purportedly provided expert declarations, but in none of the cited cases was Asuncion actually qualified as an expert witness in mortgage securitization analysis or mortgage foreclosure fraud.

The district court in turn concluded, based upon the identified deficiencies in the resume and its review of Asuncion's report and testimony, "that his testimony should not be admitted" because "it [wa]s unclear exactly what . . . Asuncion's

education, training, and experience [wa]s with respect to examination of securitized mortgages." *Id*. at 861. As for Asuncion's report, the district court noted that it was "saturated with . . . Asuncion's opinions about the legal consequences of what he contend[ed] was a failure of the mortgagees on the Whittier Property to timely and properly convey and record their purported transfers of interest." *Id*. at 862. "In essence," the district court concluded, "Asuncion ha[d] rendered a title opinion, although he [wa]s not a lawyer," "ha[d] no apparent legal training or certification in offering title opinions, and his method of legal analysis [wa]s unclear and not shown to be reliable." *Id*. at 862–63. In other words, the district court noted, there was "no showing . . . that . . . Asuncion ha[d] the requisite knowledge, training, or experience to reliably opine on legal issues surrounding securitization of mortgages or property titles." *Id*. at 866–67. "In fact," the district court noted, Asuncion's "report end[ed] with a disclaimer that" it was "'for educational and informational purposes only and specifically [wa]s not legal advice or legal opinions.'" *Id*. at 867 (quoting report). Finally, the district court concluded that "[e]ven assuming . . . Asuncion ha[d] substantial knowledge concerning the steps involved in securitizing mortgages, the vast majority of his proposed testimony . . . pertain[ed] to the legal consequences of the steps that were taken regarding the Whittier Property, a matter clearly outside his area of knowledge or expertise." *Id*. at 867.

In sum, the district court "conclude[d] [Iam] ha[d] not shown that . . . Asuncion [wa]s qualified by knowledge, experience, training, or education to express opinions on the legal validity or invalidity of transfers of interest of the Whittier

Property mortgage or note, or to express legal opinions about which persons or entities do or do not hold enforceable interests in the property" and thus "[h]is testimony [wa]s excludable on that basis alone." *Id*. The district court also concluded that "[e]ven if [it] determined that . . . Asuncion's experience and self-study of mortgage securitization provided a sufficient basis for offering such opinions, no showing ha[d] been made that [his] opinions [we]re the product of a reliable method." *Id*. "Most of . . . Asuncion's legal assertions," the district court noted, "[we]re unsupported by any citation to legal authority," and "[w]ith respect to citations that [we]re included, a number d[id] not involve New York or California law and [we]re not applicable to the Whittier Property." *Id*. at 867–68. Further, the district court concluded that "there [wa]s a substantial disconnect between the issues the jury w[ould] have to decide and . . . Asuncion's opinions about securitization of the Whittier Property mortgage." *Id*. at 871. The district court noted in support that "[t]he elements of the offenses charged turn[ed] largely upon [Iam's] state of mind and whether he had an intent to defraud and knowingly and falsely represented that Wolf was generally not paying his debts and owed . . . Gonzalez the sum of $1,260,000.00 and [Iam] the sum of $630,000." *Id*. "Nothing in . . . Asuncion's report," the district court concluded, "ha[d] any direct bearing on [Iam's] state of mind." *Id*. The district court rejected defense counsel's argument "at the *Daubert* hearing that Asuncion's testimony would indirectly bear on [Iam's] state of mind by substantiating that [Iam] was not making up his belief that the foreclosure was improper and that there was in fact a problem with it." *Id*. More specifically, the

district court concluded that "any connection between Asuncion's opinions and what [Iam] knew or believed about the foreclosure [wa]s largely speculative" and that "Asuncion's opinions ha[d] no apparent connection to [Iam's] alleged representations" on the involuntary bankruptcy petition "that Wolf was generally not paying his debts as they became due or that he owed [Iam] the sum of $630,000, or to any belief by [Iam] that a defect in the foreclosure entitled him to file an involuntary bankruptcy petition against Wolf in Kansas." *Id*. Lastly, the district court concluded that "Asuncion's opinions include[d] so many unsupported and confusing assertions that his testimony would result in confusion of the issues and undue delay, which would substantially outweigh any possible probative value of the testimony." *Id*.

c) Analysis

Iam does not dispute in his appeal that the district court actually performed its gatekeeper role and applied the proper *Daubert* framework in deciding whether to admit Asuncion's testimony. Instead, Iam argues only that the district court abused its discretion in excluding Asuncion's testimony. Although Iam does not attempt to directly refute each of the grounds cited by the district court for excluding Asuncion's testimony pursuant to Rule 702, his appellate arguments do generally touch on the areas of concern cited by the district court. Consequently, we will address those arguments in order.

As an initial matter, however, we note that the government argues, correctly in our view, that Iam has failed to challenge an alternative basis for excluding Asuncion's testimony that was cited by the district court in its written decision, i.e.,

that under Federal Rule of Evidence 403, Asuncion's "testimony would result in confusion of the issues and undue delay, which would substantially outweigh any possible probative value of the testimony." ROA, Vol. 1 at 871. As the government correctly notes, "[w]hen an appellant does not challenge a district court's alternate ground for its ruling, we may affirm the ruling." *Starkey v. Boulder Cnty. Soc. Servs.*, 569 F.3d 1244, 1252 (10th Cir. 2009). Notably, Iam concedes in his appellate reply brief "that [his] opening brief did not discuss the trial court's ruling with specific reference to [Rule] 403." Aplt. Reply Br. at 10. And, although Iam includes a subheading in his appellate reply brief that states "Asuncion's Testimony Was Relevant Under FRE 403," he does not otherwise attempt to dispute the district court's conclusion that the admission of Asuncion's testimony would result in confusion of the issues and undue delay, which would in turn substantially outweigh any probative value of the testimony. Consequently, we could reject Iam's challenge to the district court's exclusion of Asuncion's testimony on this basis alone.

Out of an abundance of caution, however, we will briefly address Iam's challenge to the district court's conclusion that Asuncion's testimony was inadmissible under Rule 702. Iam begins by asserting that "Asuncion's testimony was based on his experience and knowledge obtained by performing due diligence reviews on investments for Mass Mutual starting in 1991 and his continued concentration of his analysis on securitization of mortgages for the seven years preceding this case." Aplt. Br. at 35–36. This assertion, however, fails to refute or even seriously address the concerns expressed by the district court regarding

Asuncion's education and experience. As previously noted, the district court concluded that it was unclear from reviewing Asuncion's resume and his testimony "exactly what . . . Asuncion's education, training, and experience [wa]s with respect to [the] examination of securitized mortgages." ROA, Vol. 1 at 861. The record on appeal firmly supports that conclusion. It is unclear from the record precisely what Asuncion's educational background is. Likewise, much of Asuncion's employment history remains murky: Asuncion testified that his "background [wa]s in the production industry since 1985" and for the past seven years he had "been doing mortgage analysis on mortgages that has [sic] been securitized." *Id*., Vol. 3 at 25. Asuncion conceded on cross-examination that there was a ten-year gap between him leaving MassMutual—where he worked in "the production industry"—and becoming involved in mortgage analysis, and he offered no explanation where he worked during that ten-year gap. *Id*. at 91. Further, Asuncion conceded on cross-examination that there is no license or certification for the type of forensic examinations that he conducts. Finally, Asuncion could not point to a single case in which he had been permitted to testify as an expert witness in the areas of mortgage securitization. Thus, the district court did not abuse its discretion in concluding that the evidence presented at the *Daubert* hearing was insufficient to establish that Asuncion had sufficient technical or other specialized knowledge to help the jury understand the evidence or to determine a fact in issue, or in turn that Asuncion's proposed testimony was the product of reliable principles and methods. *See* Rule 702(a), (c).

Relatedly, Iam challenges on appeal the district court's conclusion that there was "no showing that . . . Asuncion ha[d] the requisite knowledge, training, or experience to reliably opine on legal issues surrounding the securitization of mortgages or property titles." ROA, Vol. 1 at 866–67. According to Iam, "[t]he court incorrectly focused on the opinions of Asuncion as 'legal opinions.'" Aplt. Br. at 37. "Asuncion's opinions," Iam argues, "were based on his analysis of the contents of public real estate records and documents regarding the securitization of the loan." *Id*. Iam further argues that Asuncion "was not providing a title opinion," and instead "was providing testimony concerning what the documents said and whether the filing of the key assignment to U.S. Bank had followed the requirements of the pooling agreement." *Id*.

Whether or not Asuncion's opinions and written report effectively constituted a "title opinion," it is clear from the record that, as the district court concluded, Asuncion's report was replete with his opinions on legal issues[5] and, ultimately,

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[5] For example, Asuncion stated in his report, in describing Real Estate Mortgage Investment Conduits (REMICS), that "[i]n most mortgage-backed securitizations, the owner of a pool of mortgage loans . . . sells and transfers such loans to a Qualified Special Purpose Entity ('QSPE'), usually a trust, that is designed specifically to qualify as a REMIC, and simultaneously, the QSPE issues securities that are backed by cash flows generated from the transferred assets to investors in order to pay for the loans along with a certain return." ROA, Vol. 1 at 120. He in turn stated that "it can be argued that the trustee, the QSPE, and the other parties servicing the trust, have no legal or equitable interest in the securitized mortgages," and that "it can be further asserted that any servicer who alleges that they are, or that they have the right or have been assigned the right to claim, that they are the holder of the note for purposes of standing to bring an action of foreclosure, is stating a legal nullity." *Id*.

Asuncion was purporting to offer his opinions on "the legal consequences of what he contend[ed] was a failure of the mortgagees on the Whittier Property to timely and properly convey and record their purported transfers of interest." ROA, Vol. 1 at 862. Because Asuncion failed to provide any basis that would allow the district court to conclude that he was qualified to offer opinions on legal issues, the district court did not abuse its discretion in excluding his testimony.

Finally, Iam argues in his appeal that, contrary to the conclusion reached by the district court, Asuncion's testimony would have been relevant and helpful to the jury. According to Iam, "Asuncion's testimony would have been helpful to the jury's understanding of the broken chain of title and [the] trustee's lack of standing to foreclose by and through The Wolf Firm." Aplt. Br. at 38. He further argues that "[i]t would have informed the jury that [Iam] was not an outlier with crazy or crackpot ideas and beliefs." *Id*.

As the government correctly notes, the alleged broken chain of title and the trustee's alleged lack of standing to foreclose on the Whittier Property "were not even issues in the case that the jury had to consider or decide." Aple. Br. at 41. Instead, with respect to the mail fraud charge, the jury had to decide, in relevant part, whether Iam acted with the intent to defraud and whether his scheme to defraud employed false or fraudulent pretenses or representations, in particular, whether Iam falsely or fraudulently alleged in the involuntary bankruptcy petition that Wolf owed amounts to Iam and Gonzalez and that Wolf was not paying his debts as they came due. And with respect to the false statement charge, the jury had to decide, in

relevant part, whether Iam, in the involuntary bankruptcy petition that he filed against Wolf, made false declarations or statements under penalty of perjury, knew the declarations or statements were false, and made those declarations or statements fraudulently. As the district court correctly concluded, "Asuncion's opinions have no apparent connection" to these issues in general, or to the specific misrepresentations that Iam made in the involuntary bankruptcy petition. ROA, Vol. 1 at 871. More specifically, even if Iam believed incorrectly that there was a broken chain of title on the Whittier Property and that, as a result, the foreclosure on the Whittier Property was improper or illegal, that did not mean that (a) Wolf personally and actually owed any amounts to Iam or Gonzalez, or (b) that Wolf was not timely paying his debts as they came due. Thus, the district court did not abuse its discretion in concluding that Asuncion's opinions lacked relevance and thus would not help the jury determine any fact in issue. *See* Rule 702(a).

III

The judgment of the district court is AFFIRMED.

Entered for the Court

Mary Beck Briscoe
Circuit Judge