INSTRUCTION NO. 1

MEMBERS OF THE JURY

In any jury trial there are, in effect, two judges. I am one of the judges, you are the other. I am the judge of the law. You, as jurors, are the judges of the facts. I presided over the trial and decided what evidence was proper for your consideration. It is also my duty at the end of the trial to explain to you the rules of law that you must follow and apply in arriving at your verdict.

In explaining the rules of law you must follow, I will first give you some general instructions that apply in every criminal case. Then I will give you some specific rules of law that apply to this particular case. Finally, I will explain the procedures you should follow in your deliberations and the possible verdicts you may return. You will be able to take these instructions with you into the jury room, so there is no need to take notes.

INSTRUCTION NO. 2

It is your duty as jurors to follow the law as stated in these instructions, and to apply the law to the facts as you find them from the evidence.

You are not to single out one instruction alone as stating the law, but must consider the instructions as a whole.

You are not to be concerned with the wisdom of any rule of law stated by these instructions. You must not substitute your own opinion of what the law is or ought to be.

You should not read into these instructions, or anything else I have said or done, any suggestion as to what your verdict should be. That is entirely up to you.

INSTRUCTION NO. 3

You have been chosen and sworn as jurors in this case to try the issues of fact presented by the allegations of the Indictment and the denial made by [defendant’s name] “not guilty” plea. You are to perform this duty without bias or prejudice as to any party. The law does not permit jurors to be governed by sympathy, prejudice, or public opinion.

INSTRUCTION NO. 4

An Indictment is a formal method of accusing the defendant of a crime. It is not evidence of any kind against the defendant. The law presumes the defendant to be innocent of the crime[s] charged. The defendant begins the trial with a “clean slate” with no evidence against the defendant. Only the evidence presented to the jury is to be considered in support of any charge against the defendant. The presumption of innocence alone is sufficient to acquit the defendant, unless you are satisfied beyond a reasonable doubt of the defendant’s guilt after careful and impartial consideration of all the evidence.

INSTRUCTION NO. 5

As I have said before, the prosecution has the burden of proving the defendant’s guilt beyond a reasonable doubt. Some of you may have served as jurors in civil cases, where you were told that it is only necessary to prove that a fact is more likely true than not true. In criminal cases, the prosecution’s proof must be more powerful than that. It must be beyond a reasonable doubt.

There are very few things in this world that we know with absolute certainty, and in criminal cases, the law does not require proof that overcomes every possible doubt. A reasonable doubt is a doubt based on reason after careful and impartial consideration of all the evidence.

The burden of proof is always upon the prosecution to prove that the defendant is guilty beyond a reasonable doubt. This burden never shifts to the defendant. The law does not require a defendant to prove [his or her] innocence or produce any evidence at all.

If, based on your consideration of the evidence, you are convinced that [defendant’s name] has been proved guilty beyond a reasonable doubt, find the defendant guilty. If you are not so convinced, find the defendant not guilty.

INSTRUCTION NO. 6 (IF APPLICABLE)

A separate crime is charged in each count of the Indictment. Each count and the evidence pertaining to it should be considered separately. The fact that you may find the defendant guilty or not guilty as to one of the crimes charged should not control your verdict as to any other count.

INSTRUCTION NO. 7

You are here to decide whether the prosecution has proved beyond a reasonable doubt that the defendant is guilty of the crime[s] charged in the Indictment. The defendant is not on trial for any act, conduct, or crime not charged in the Indictment.

Also, it is not up to you to decide whether anyone who is not on trial in this case should be prosecuted for the crime charged.

INSTRUCTION NO. 8

The evidence in this case consists of the sworn testimony of the witnesses, regardless of who may have called them; all exhibits received in evidence, regardless of who may have presented them; and all facts that may have been admitted or stipulated.

Statements and arguments of counsel are not evidence in this case. When, however, the parties stipulate or agree as to the existence of a fact, the jury must, unless otherwise instructed, accept the stipulation and regard that fact as conclusively proved.

Any evidence to which I sustained an objection and any evidence that I struck must be entirely disregarded.

Anything you may have seen or heard outside the courtroom is not evidence. You must entirely disregard it.

You are to consider only the evidence in this case. However, in your consideration of the evidence, you are not limited to the statements of the witnesses. On the contrary, you are permitted to draw from the facts that you find have been proved such reasonable inferences as seem justified in light of your experience. An inference is a deduction or conclusion that reason would lead you to draw from facts that are established by the evidence in the case. In the absence of such facts, you may not draw an inference.

As I said before, you should weigh all of the evidence in the case, affording each piece of evidence the weight or significance that you find it reasonably deserves.

INSTRUCTION NO. 9

You may consider both direct and circumstantial evidence. There is no difference between the weight to be given to either direct or circumstantial evidence. Nor is a greater degree of certainty required of circumstantial evidence than of direct evidence.

“Direct evidence” is the testimony of one who asserts actual knowledge of a fact, such as an eyewitness.

“Circumstantial evidence” is proof of a chain of facts or circumstances indicating the existence or the nonexistence of a particular fact, or the occurrence or nonoccurrence of a particular event.

You should weigh all of the evidence in the case, giving each piece of evidence the weight or significance that you find it reasonably deserves.

INSTRUCTION NO. 10

At times during the trial, I sustained an objection to a question. When an objection was sustained, it is your duty to disregard the question entirely. You may not speculate as to what the witness might have said if he or she had been permitted to answer the question.

Likewise, when I ordered the jury to disregard something you saw or heard, or struck it from the record, you may not consider it or speculate about it. The same rule applies to any exhibits I did not permit you to see. You may not speculate about what the exhibit might have shown.

You must completely ignore all of these things. These things are not evidence. Do not even think about them. You are bound by your oath not to let them influence your decision in any way.

INSTRUCTION NO. 11

As jurors, you are the sole judges of the credibility of witnesses and the weight their testimony deserves. You may be guided by the appearance and conduct of the witnesses, or by the way the witness testifies, or by the character of the testimony given, or by evidence to the contrary of the testimony given.

You should carefully scrutinize all of the testimony given, the circumstances under which each witness has testified, and every matter in evidence that tends to show whether a witness is worthy of belief. Consider each witness’s intelligence, motive and state of mind, and demeanor and manner while on the stand. Consider the witness’s ability to observe the matters as to which he or she has testified, and whether he or she impresses you as having an accurate recollection of these matters. Consider also any relation each witness may bear to either side of the case; the manner in which each witness might be affected by the verdict; and the extent to which, if at all, each witness is either supported or contradicted by other evidence in the case.

Inconsistencies or discrepancies in the testimony of a witness, or between the testimony of different witnesses, may or may not cause you to discredit such testimony. Two or more persons witnessing an event may simply see or hear it differently. Innocent misrecollection, like failure of recollection, is not an uncommon experience. In weighing the effect of a discrepancy, always consider whether it pertains to a matter of importance or an unimportant detail, and whether the discrepancy results from innocent error or intentional falsehood.

After making your own judgment, you will give the testimony of each witness such weight, if any, you think it deserves. You may believe or disbelieve all or any part of any witness’s testimony.

INSTRUCTION NO. 12

Your decision should not be determined by the number of witnesses testifying for or against a party. You should consider all the facts and circumstances in evidence to determine which of the witnesses you choose to believe or not believe. You are allowed to find that the testimony of a smaller number of witnesses on one side is more credible than the testimony of a greater number of witnesses on the other side.

INSTRUCTION NO. 13 (IF APPLICABLE)

The defendant has an absolute right under our Constitution not to testify.

You are not to discuss or consider the fact that the defendant did not testify when deliberating and in arriving at your verdict. You may not draw any inference from the fact that the defendant decided to exercise his constitutional privilege and did not testify.

Remember, the burden of proof is on the prosecution. The law never imposes upon the defendant the burden or duty of calling any witnesses or of producing any evidence.

[ALTERNATE INSTRUCTION IF DEFENDANT TESTIFIES]

A defendant in a criminal trial has a constitutional right to testify on his own behalf. You should consider and weigh the testimony the same as the testimony of the other witnesses and determine the weight and credibility to be given to it by the same rules that apply to witnesses generally.

INSTRUCTION NO. 14

You have heard the testimony of law enforcement officers. You should judge the testimony of law enforcement officers by the same standards as the testimony of other witnesses.

INSTRUCTION NO. 15

If any reference by me or by the attorneys to matters of evidence does not coincide with your own recollection, it is your recollection that should control during your deliberations.

INSTRUCTION NO. 16

It is the duty of the attorney on each side of the case to object when the other side offers testimony or other evidence that the attorney believes is not properly admissible. You should not show prejudice against any attorney or their client because the attorney has made objections.

If I allowed testimony or other evidence to be introduced over the objection of any attorney, this does not—unless I expressly stated—indicate any opinion as to the weight or effect of any such evidence. As stated before, you are the sole judges of the credibility of all witnesses and the weight and effect of all evidence.

If I have sustained an objection to a question addressed to a witness, you must disregard the question entirely. You may not draw any inference from the wording of it or speculate as to what the witness might have said if he or she had been permitted to answer the question.

INSTRUCTION NO. 17

If I have said or done anything in this case that makes it appear as if I have an opinion about the guilt or innocence of [defendant’s name], disregard it. You are the sole judges of the facts and should in no way be influenced by what I have done here except to follow my instructions on the law. Nothing said in these instructions and nothing in the verdict form is meant to suggest or convey in any way or manner what specific verdict I think you should find. You have the sole responsibility to decide the verdict.

INSTRUCTION NO. 18

The Indictment may state that a crime was committed “on or about” a certain date or within a range of certain dates. Although it is necessary for the prosecution to prove beyond a reasonable doubt that the crime was committed reasonably near the date or range of dates alleged, it is not necessary for the prosecution to prove that the crime was committed precisely on the date or range of dates charged.

INSTRUCTION NO. 19

[SUBSTANTIVE INSTRUCTIONS]

INSTRUCTION NO. 20

You have now heard the closing arguments of the parties. In a few minutes, you will be escorted to the jury room. Each of you will be permitted to take your copy of these instructions with you. Any exhibits admitted into evidence will also be placed in the jury room for your review.

When you go to the jury room, you should first select a foreperson, who will preside over your deliberations and will be your spokesperson here in the courtroom.

I suggest that you should then review the instructions. Not only will your deliberations be more productive if you understand the legal principles upon which your verdict must be based, but for your verdict to be valid, you must follow the instructions throughout your deliberations. Remember, you are the judges of the facts, but you are bound by your oath to follow the law as stated in the instructions.

You will also be given the verdict form to take with you to the jury room. When you have reached unanimous agreement as to your verdict, you will have the foreperson fill it in, date and sign the form, and then return your verdict to the courtroom.

Your deliberations will be confidential. You will not be required to explain your verdict to anyone.

INSTRUCTION NO. 21

The attitude and conduct of jurors at the outset of their deliberations are matters of considerable importance. It is rarely productive or good for a juror, upon entering the jury room, to make an emphatic expression of an opinion on the case or to announce a determination to stand for a certain verdict. When one does that at the outset, a sense of pride may be aroused, and the juror may hesitate to recede from an announced position if shown that it is wrong.

INSTRUCTION NO. 22

The verdict must represent the considered judgment of each juror. In order to return a verdict, it is necessary that each juror agree to the verdict. Your verdict must be unanimous.

It is your duty, as jurors, to consult with one another, and to deliberate with a view to reaching an agreement, if you can do so without violence to individual judgment. Each of you must decide the case for yourself—but do so only after an impartial consideration of the evidence in the case with your fellow jurors. In the course of your deliberations, do not hesitate to re-examine your own view, and change your opinion, if convinced it is erroneous. But do not surrender your honest conviction as to the weight or effect of evidence solely because of the opinion of your fellow jurors, or for the mere purpose of returning a verdict.

Remember at all times, you are not partisans. You are judges of the facts. Your sole interest is to seek the truth from the evidence in the case, without speculation or assumption.

INSTRUCTION NO. 23

If you find the defendant guilty, it will be my duty to decide what the punishment will be. You should not discuss or consider the possible punishment in any way while deciding your verdict.

INSTRUCTION NO. 24

If it becomes necessary during your deliberations to communicate with me, you may send a note through the court security officer, signed by your foreperson or by one or more jurors. No member of the jury should attempt to communicate with me, or any other member of the court's staff, by any means other than a signed writing; and I, and other members of the court’s staff, will never communicate with any member of the jury on any subject touching the merits of the case, otherwise than in writing or orally here in open court.

You will note from the oath the court security officer will take that the officer, as well as any other person, is also forbidden to communicate in any way with any juror about any subject touching the merits of the case.

Bear in mind also that you are not to reveal to any person—not even to me—how the jury stands numerically or otherwise until you have reached a unanimous verdict.

INSTRUCTION NO. 25

During your deliberations, you are able as a group to set your own schedule for deliberations. You may deliberate as late as you wish or recess at an appropriate time set by yourselves. You may set your own schedule for lunch and dinner breaks.

If your deliberations will go beyond today, please inform me by a note when you recess for the evening and indicate at what time you intend to reconvene.

POST-VERDICT INSTRUCTION

Your duty as jurors is complete and you are discharged from service. Thank you very much for your service. Your attention, timeliness, and dedication are appreciated by all the parties, attorneys, court staff, and public. You are now relieved of the instructions I have given you not to talk or read or research about the case. You may do so if you choose.

You must leave your notes and copies of the jury instructions in the jury room to be destroyed.

(If applicable) [I have issued an Order Regarding Juror Contact that imposes limitations on contact and on statements you may make. Please review that order carefully.]

You may be contacted by parties to the case, their attorneys, or the media. You are under no obligation to speak to any of them. The court does not provide your contact information, but we will accept mail directed to you and forward it from the jury office.

Consider carefully your obligation to and the feelings of your fellow jurors before speaking with anyone about your service here. Because of the special relationship of jurors to each other, I strongly recommend you never disclose the vote, discussions, or inclinations of a fellow juror. You may of course discuss your own feelings or reactions to evidence presented or your reaction to jury service.

I have instructed you to make your decision only on the basis of the evidence presented in court and to ignore outside information or influence. So, as long as you kept your oath to consider only the evidence in this case, there is no reason to speak with anyone about your service here as a juror.

Again, thank you very much for your service.

Case-Specific Instructions

INSTRUCTION NO. \_\_

EVIDENCE OF GOOD CHARACTER

There has been some evidence of the defendant’s reputation for good character. You should consider such evidence along with all the other evidence in the case.

Evidence of good character may be sufficient to raise a reasonable doubt whether the defendant is guilty, because you may think it improbable that a person of good character would commit such a crime. Evidence of a defendant’s character, inconsistent with those traits of character ordinarily involved in the commission of the crime charged, may give rise to a reasonable doubt.

You should also consider any evidence offered to rebut the evidence offered by the defendant.

However, you should always bear in mind that the law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence.

INSTRUCTION NO. \_\_

PRIOR CONVICTIONS

You have heard evidence that the defendant was convicted of [prior convictions]. [State the counts for which these prior convictions are relevant.]

The evidence that the defendant may have been convicted of another crime does not mean that the defendant committed the crime charged in *this* case, and you must use the evidence only with regard to weighing and considering the element of the respective offense charged. You may find the defendant guilty of the crimes charged here only if the government has proved beyond a reasonable doubt each element of the respective offenses charged in this case.

INSTRUCTION NO. \_\_

VOLUNTARINESS OF STATEMENT BY DEFENDANT

Evidence of any statement the defendant is alleged to have made after the commission of a crime charged in this case, but not made in court, should always be considered by you with caution and weighed with care. Any such statements should be disregarded entirely unless the other evidence in the case convinces you by a preponderance of the evidence that the statement was made knowingly and voluntarily.

In determining whether any such statement was knowingly and voluntarily made, you should consider, for example, the age, training, education, occupation, and physical and mental condition of the defendant. You also should consider any evidence concerning the defendant’s treatment while under interrogation if the statement was made in response to questioning by government officials. Finally, you should consider all other circumstances in evidence that surround the making of the statement.

If, after considering all this evidence, you conclude that the defendant’s statement was made knowingly and voluntarily, you may give such weight to the statement as you feel it deserves under all the circumstances.

INSTRUCTION NO. \_\_

PRIOR SIMILAR ACTS

Although you have heard evidence of [prior similar acts], the defendant is not on trial for that incident. You may consider that evidence only as it bears on the defendant’s [e.g, motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake or accident] in this case, and for no other purpose. Of course, the fact that you have heard evidence about the [prior similar acts] and whether it is an act similar to the one charged in this case does not mean that the defendant necessarily committed the acts charged in this case.

You must not consider this as evidence of the defendant’s character or that [he or she] acted in conformity with that character. You must not consider this evidence for any purpose except the limited purpose for which it was admitted.

INSTRUCTION NO. \_\_

PRIOR INCONSISTENT STATEMENTS BY A WITNESS

The testimony of a witness may be discredited by showing that the witness testified falsely concerning a material matter, or by evidence that at some other time the witness said or did something, or failed to say or do something, which is inconsistent with the testimony the witness gave at this trial.

If a prior statement was made under oath, you may consider it as evidence of the truth of the matter contained in that prior statement.

Otherwise, earlier statements of a witness were not admitted in evidence to prove that the contents of those statements are true. You may consider the earlier statements only to determine whether you think they are consistent or inconsistent with the trial testimony of the witness and therefore whether they affect the credibility of that witness. If you believe that a witness has been discredited in this manner, it is your exclusive right to give the testimony of that witness whatever weight you think it deserves.

INSTRUCTION NO. \_\_

EXPERT WITNESSES

In some cases, such as this one, scientific, technical, or other specialized knowledge may assist the jury in understanding the evidence or in determining a fact in issue. A witness who has knowledge, skill, experience, training or education, may testify and state an opinion concerning such matters.

You are not required to accept such an opinion. You should consider opinion testimony just as you consider other testimony in this trial. Give opinion testimony as much weight as you think it deserves, considering the education and experience of the witness, the soundness of the reasons given for the opinion, and other evidence in the trial.

INSTRUCTION NO. \_\_

EFFECT OF GUILTY PLEAS

[Other people] have pleaded guilty to crimes arising out of the same or similar events for which [defendant’s name] is on trial. These guilty pleas are not evidence against [defendant’s name], and you may consider them only in determining the believability of [those other people].

INSTRUCTION NO. \_\_

ACCOMPLICE AND CO-DEFENDANT: PLEA AGREEMENT

The government called as one of its witnesses an alleged accomplice, who was named as a co-defendant in the Indictment. The government has entered into a plea agreement with the co-defendant, providing that the government may recommend a reduced sentence if [he or she] cooperated with the government and testified truthfully. Plea bargaining is lawful and proper, and the rules of this court expressly provide for it.

An alleged accomplice, including one who has entered into a plea agreement with the government, is not prohibited from testifying. On the contrary, the testimony of an alleged accomplice, may by itself, support a guilty verdict. However, accomplice testimony must be viewed with caution and weighed with great care. You should not convict a defendant upon the unsupported testimony of an alleged accomplice, unless you believe that testimony beyond a reasonable doubt. The fact that an accomplice has entered a guilty plea to the offense charged is not evidence of the guilt of any other person.

INSTRUCTION NO. \_\_\_

IMMUNITY

The testimony of an immunized witness, someone who has been told that [his or her] testimony will not be used against [him or her] in return for that cooperation, must be examined and weighed by the jury with greater care than the testimony of someone who is appearing in court without the need for such an agreement with the government.

INSTRUCTION NO. \_\_

CO-CONSPIRATOR: VICARIOUS LIABILITY

You will recall that I have admitted into evidence against [defendant’s name] the acts and statements of [names of co-conspirators] because these acts were committed by persons who, the government charges, were co-conspirators of [defendant’s name].

The reason for allowing this evidence to be received against [defendant’s name] has to do with the nature of the crime of conspiracy. A conspiracy is often referred to as a partnership in crime. Thus, as in other types of partnerships, when people enter into a conspiracy to accomplish an unlawful end, each and every member becomes an agent for the other conspirators in carrying out the conspiracy. Accordingly, the reasonably foreseeable acts, declarations, statements and omissions of any member of the conspiracy and in furtherance of the common purpose of the conspiracy are deemed, under the law, to be the acts of all of the members, and all of the members are responsible for such acts, declarations, statements and omissions.

If you find, beyond a reasonable doubt, that [defendant’s name] was a member of the conspiracy charged in the Indictment, then any acts done or statements made in furtherance of the conspiracy by persons also found by you to have been members of that conspiracy, may be considered against [defendant’s name]. This is so even if such acts were done and statements were made in [defendant’s name]’s absence or without [his or her] knowledge. However, before you consider the statements or acts of a co-conspirator in deciding the issue of [defendant’s name]’s guilt, you must first determine that the acts and statements were made during the existence, and in furtherance, of the unlawful scheme. If the acts were done or the statements made by someone whom you do not find to have been a member of the conspiracy, or if they were not done or said in furtherance of the conspiracy, they may not be considered by you as evidence against [defendant’s name].

INSTRUCTION NO. \_\_\_

MULTIPLE DEFENDANTS: SEPARATE CONSIDERATION

As you know, there are [number of] defendants on trial here: \_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_\_ and \_\_\_\_\_\_\_\_\_\_. Each defendant is entitled to have his or her case decided solely on the evidence that applies to him or her. Count \_\_\_ of the Indictment charges a crime against \_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_\_\_, and \_\_\_\_\_\_\_\_\_\_.

You must give separate and individual consideration to each charge against each defendant. The fact that you find one defendant guilty or not guilty of the crime charged in Count \_\_\_ should not control your verdict as to whether you find the another defendant guilty or not guilty of the crime charged in Count \_\_\_\_, nor should it control your verdict as to any other crime charged against that defendant. You must consider the evidence presented and determine whether the government has proved, beyond a reasonable doubt, its case against each of the defendants.

INSTRUCTION NO. \_\_

SUMMARIES ARE NOT EVIDENCE

Certain charts and summaries have been shown to you to help explain the evidence in this case. Their only purpose is to help explain the evidence. These charts and summaries are not evidence or proof of any facts.

INSTRUCTION NO. \_\_\_

TRANSCRIPT OF RECORDED CONVERSATION

During this trial, you have heard sound recordings of certain conversations. These conversations were legally recorded; they are a proper form of evidence and may be considered by you as you would any other evidence. You were also given transcripts of those recorded conversations.

Keep in mind that the transcripts are not evidence. They were given to you only as a guide to help you follow what was being said. The *recordings* themselves are the evidence. If you noticed any differences between what you heard on the recordings and what you read in the transcripts, you must rely on what you heard, not what you read. If you could not hear or understand certain parts of the recordings, you must ignore the transcript as far as those parts are concerned.

INSTRUCTION NO. \_\_\_

INTERSTATE OR FOREIGN COMMERCE

Interstate commerce means commerce or travel between one state, territory or possession of the United States and another state, territory or possession of the United States, including the District of Columbia. Commerce includes travel, trade, transportation and communication.

If you decide that there was any effect at all on interstate commerce, then that is enough to satisfy this element. All that is necessary is that the natural and probable consequence of the acts the defendant took would be to affect interstate commerce.

Foreign commerce means commerce between any part of the United States (including its territorial waters), and any other country (including its territorial waters).

INSTRUCTION NO. \_\_\_

ACTUAL OR CONSTRUCTIVE POSSESSION

The law recognizes two kinds of possession: actual possession and constructive possession. A person who knowingly has direct physical control over an object or thing, at a given time, is then in actual possession of it. A person who, although not in actual possession, knowingly has the power at a given time to exercise dominion or control over an object, either directly or through another person or persons, is then in constructive possession of it.

[More than one person can be in possession of an object if each knows of its presence and has the power to control it.]

[A defendant has joint possession of an object when two or more persons share actual or constructive possession of it. However, merely being present with others who have possession of the object does not constitute possession.]

[In the situation where the object is found in a place (such as a room or car) occupied by more than one person, you may not infer control over the object based solely on joint occupancy. Mere control over the place in which the object is found is not sufficient to establish constructive possession. Instead, in this situation, the government must prove some connection between the particular defendant and the object.]

[In addition, momentary or transitory control of an object is not possession. You should not find that the defendant possessed the object if [he or she] possessed it only momentarily or did not know that [he or she] possessed it.]