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| IN THE UNITED STATES DISTRICT COURT  FOR THE DISTRICT OF UTAH | |
| UNITED STATES OF AMERICA,  Plaintiff,  v.  ,  Defendant. | JURY INSTRUCTIONS  Case No.  Magistrate Judge Daphne A. Oberg |

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| IN THE UNITED STATES DISTRICT COURT  FOR THE DISTRICT OF UTAH | |
| UNITED STATES OF AMERICA,  Plaintiff,  v.  ,  Defendant. | PRELIMINARY JURY INSTRUCTIONS  Case No.  Magistrate Judge Daphne A. Oberg |

INSTRUCTION NO.

MEMBERS OF THE JURY:

I will now read some preliminary instructions about the process we will follow. At the end of the trial, I will provide more instructions about the law that governs the issues. During the trial, focus your attention on the facts of this case, as shown by the evidence presented.

It will be your duty to determine the facts from the evidence presented in court. You will then have to apply the law whether you agree with it or not. Nothing I say or do during the course of the trial is intended to indicate that I have any opinion about the facts of this case nor should anything I say or do be taken as indicating what your verdict should be.

Each juror must seek the truth from the evidence presented, so that the jury may render a just verdict.

INSTRUCTION NO.

This is a criminal case. There are three basic rules about a criminal case you need to remember.

First, each of the defendants are presumed innocent unless and until proven guilty. The Information, the charging document, brought by the prosecution against the defendants is only an accusation, nothing more. It does not prove anything. The defendants have a clean slate.

Second, the burden of proof is on the prosecution. Neither of the defendants have any burden at all. They have no burden to prove their innocence, or to present any evidence, or to testify. In other words, while the prosecution has the burden to prove its case, the defendants do not have to prove their innocence. The defendants also have the right to remain silent. The law prohibits you from considering the fact that either of the defendants may not have testified.

Third, the prosecution must individually prove the defendants’ guilt beyond a reasonable doubt. I will give you further instructions on this point later, but bear in mind that, in this respect, a criminal case is different than a civil case.

INSTRUCTION NO.

The prosecution convened this case by filing an Information. Both of the defendants, [name of defendants], have pleaded “not guilty” to the charge[s] contained in the Information. This plea puts at issue the elements of the offenses as described in these instructions, and imposes on the prosecution the burden of establishing each of these elements, against each of the defendants, by proof beyond a reasonable doubt.

INSTRUCTION NO.

I will give you detailed instructions on the law at the end of the case, and those instructions will guide your deliberations and decision. But in order to help you follow the evidence, I will now give you a brief summary of the elements of the offense[s] which the prosecution seeks to prove.

Count I

The defendant, [name of defendant], is charged with one count of [name of offense] in violation of 18 U.S.C. § [XXX]. [SUMMARY OF ELEMENTS]

[REPEAT FOR REMAINING COUNTS.]

INSTRUCTION NO.

The evidence from which you will find the facts will consist of the sworn testimony of witnesses; documents and other things received as exhibits, regardless of who may have produced them; and any facts the lawyers agree or stipulate to, or that I may instruct you to find.

In your consideration of the evidence, you are not limited to the statements of the witnesses. You are permitted to draw reasonable inferences from the facts which you find have been proven. An inference is a deduction or conclusion which reason and common sense would lead you to draw from facts which are established by the evidence.

But certain things are not evidence and must not be considered by you:

1. Statements, arguments and questions by lawyers are not evidence. However, when the attorneys stipulate as to the existence of a fact, you must accept the stipulated fact as being proven.

2. Objections to questions are not evidence. Lawyers have an obligation to make an objection when they believe evidence being offered is improper under the rules of evidence. You should not be influenced by an objection or by my ruling on it. If the objection is sustained, ignore the question. If it is overruled, treat the answer like any other.

3. Testimony that I have excluded or told you to disregard is not evidence and must not be considered.

4. If you are instructed that testimony or evidence is received for a limited purpose, it may only be considered for that purpose.

5. Anything you may have seen or heard outside the courtroom is not evidence and must be disregarded. You must decide the case solely on the evidence presented here in the courtroom.

INSTRUCTION NO.

You are the sole judges of the credibility of the witnesses and the weight of the testimony and evidence. In judging the weight of the testimony and the credibility of the witnesses you may take into consideration: any bias; any interest they have in the result of the case; their relationship to any of the parties; any probable motive or lack of motive to testify fairly; their demeanor on the witness stand; the reasonableness of their testimony; their frankness or candor, or the lack of; their opportunity to know; their ability to understand; their capacity to remember; and the extent to which their testimony has been either supported or contradicted by other credible evidence.

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 incident or a transaction may simply see or hear it differently and innocent mis-recollection, like failure of recollection, is not an uncommon experience. In weighing the effect of a discrepancy, always consider whether it pertains to an important or 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. (IF APPLICABLE)

You may hear the testimony of an expert witness. This term denotes a witness who, by education and experience, has become expert in some art, science, profession, or calling, and may state opinions as to matters in which the witness is an expert, and may also state the reasons for the opinion.

You are not bound, however, by such an opinion. You should weigh expert opinion testimony just as you weigh any other testimony.

INSTRUCTION NO. (IF APPLICABLE)

The prosecution and the defendant have stipulated—that is they have agreed—to certain facts. Therefore, you must treat these facts as conclusively proven. I will now read the stipulated facts:

[INSERT STIPULATED FACTS]

INSTRUCTION NO.

At the end of trial, you must make your decision based on what you recall of the evidence and the exhibits received into evidence. You will not have a transcript of the trial. You will have the exhibits which are received into evidence. I urge you to pay close attention to the testimony as it is given.

INSTRUCTION NO.

You will be permitted to take notes during the course of the trial. If you do, you need to leave them in the jury room when you leave at night, and remember that they are for your own personal use.

You, of course, are not obligated to take notes. If you do not take notes, you should not be influenced by the notes of another juror, but rather you should rely upon your own recollection of the evidence.

Note-taking must not be allowed to interfere with the ongoing nature of the trial or distract you from what happens here in court. Any notes taken by any juror concerning this case should not be disclosed to anyone other than a fellow juror and at no other time than during deliberations.

INSTRUCTION NO.

During the trial, it may be necessary for me to discuss legal matters with the lawyers out of your hearing, either by having a conference here at the bench while you are present in the courtroom, or by calling a recess. Please do not speculate as to what we are discussing or why we are having these discussions.

INSTRUCTION NO.

Next, a few words about your conduct as jurors. These instructions may seem odd, but they are critically important, because if you violate these rules the trial may be invalid. We do not want to get a verdict and then find out later that one of you considered information from outside the courtroom.

First, until this trial is over, you may not discuss the case or the evidence with anyone, even fellow jurors.

Second, if anyone should try to talk to you about the subject of this case, bring it to the attention of the jury administrator promptly.

Third, do not read or listen to anything touching on this case in any way. Do not watch or listen to any news reports concerning this trial on television or on the radio, and do not read any news accounts of this trial in a newspaper, on the internet, or on any instant communication device or service, including smartphones, email, texts, Facebook, Twitter, and other devices and services.

Fourth, do not try to do any research or make any investigation about the case on your own. This means you must not consult any person or source, including internet resources, on subjects related to this case.

Fifth, when you go home tonight and family and friends ask what the case is about, remember you cannot speak with them about the case. All you can tell them is that you are on a jury, the estimated schedule for the trial, and that you cannot talk about the case until it is over.

Sixth, to avoid even the appearance of improper conduct, do not talk to any of the parties, the lawyers, or witnesses about anything until the case is over, even if your conversation with them has nothing to do with the case. The lawyers and parties have been given the same instruction about not speaking with you, so do not think they are being unfriendly to you.

Seventh, do not form any opinion until all the evidence is in. Keep an open mind until you start your deliberations at the end of the case after you have heard and considered all of the evidence, the closing arguments, and the rest of the instructions I will give you on the law.

Finally, your smartphones, email, texts, Facebook, Twitter, and other devices and services should not be used in any way with regard to this case.

After the trial is over and I have released you from the jury, you may then discuss the case with anyone, but you are not required to do so. I will give you more instructions about this when you have returned your verdict.

Again, we want to avoid the case where a juror did some internet research and thought that Google Street View showed that an intersection looked differently than the photos in court—and that research voided the verdict. Please play by these rules during the trial.

INSTRUCTION NO.

The trial will now begin. First, the prosecution will make an opening statement, which is simply an outline to help you understand the evidence as it comes in. Next, each of the defendants’ attorneys may, but do not have to, make an opening statement. Opening statements are neither evidence nor arguments.

The prosecution will then present its witnesses, and each defendant may cross-examine them. Then each defendant may, but is not required to, present witnesses, who the prosecution may cross-examine. If either of the defendants choose to present witnesses, the prosecution may, but is not required to, present rebuttal witnesses, who the defendants may cross-examine.

After all the evidence is in, I will give you instructions on the law, after which the attorneys for the prosecution and each of the defendants will present their closing arguments to summarize and interpret the evidence for you.

You will then retire to deliberate on your verdict.

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| IN THE UNITED STATES DISTRICT COURT  FOR THE DISTRICT OF UTAH | |
| UNITED STATES OF AMERICA,  Plaintiff,  v.  ,  Defendant. | FINAL JURY INSTRUCTIONS  Case No.  Magistrate Judge Daphne A. Oberg |

INSTRUCTION NO.

MEMBERS OF THE JURY:

Now that you have heard the evidence, it is my duty to give you instructions as to the law applicable to this case. Remember that the preliminary instructions given to you at the start of trial are part of your instructions.

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.

INSTRUCTION NO.

You are to perform your duty as jurors without sympathy, bias, or prejudice as to any party.

It would be improper for you to consider any personal feelings you may have about one of the parties’ race, religion, national origin, gender, orientation, or age.

It would be equally improper for you to allow any feelings you might have about the nature of the crime[s] charged to influence you in any way.

The parties are entitled to a trial free from prejudice.

INSTRUCTION NO.

An Information is a method of accusing the defendants of a crime. It is not evidence of any kind against either defendant. The law presumes both defendants to be innocent of the crime[s] charged. Thus, both defendants begin the trial with a “clean slate,” with no evidence against them. The presumption of innocence, alone, requires you 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. Under the law, the only thing you can consider in support of any charge against either defendant is the evidence that was presented to you.

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 overcoming every possible doubt. A reasonable doubt is a doubt based on reason and common sense after careful and impartial consideration of all the evidence. Defendant cannot to be convicted on mere suspicion or conjecture.

The burden of proof is always on the prosecution. The prosecution has to prove each individual defendant guilty beyond a reasonable doubt. This burden never shifts to either of the defendants. Each defendant has the right to require the prosecution to prove every charge against him or her. If either defendant is satisfied that the prosecution has not proved its case, he or she may decline to call any witnesses or produce any evidence.

If, based on your consideration of the evidence, you are firmly convinced an individual defendant is guilty of the crime[s] charged, you must find that individual defendant guilty of that particular crime. If on the other hand, you think there is a real possibility the defendant is not guilty, you must give that defendant the benefit of the doubt and find the defendant not guilty.

INSTRUCTION NO. (IF APPLICABLE)

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

INSTRUCTION NO.

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

INSTRUCTION NO.

The Information 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.

If you find either 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.

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

Upon allowing testimony or other evidence to be introduced over the objection of any attorney, I do not indicate any opinion as to the weight or effect of any such evidence. You the jurors are the sole judges of the credibility of all witnesses and the weight and effect of all evidence.

When I have sustained an objection to a question addressed to a witness, you must disregard the question entirely, and may draw no inference from the wording of it or speculate as to what the witness would have said if the witness had been permitted to answer the question.

INSTRUCTION NO.

There are, generally speaking, two types of evidence from which a jury may properly find the truth as to the facts of a case. One is direct evidence—such as the testimony of an eyewitness. The other is indirect or circumstantial evidence—the proof of a chain of circumstances pointing to the existence or nonexistence of certain facts.

The law makes no distinction between direct and circumstantial evidence.

INSTRUCTION NO.

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.

INSTRUCTION NO. (IF APPLICABLE)

Each defendant has an absolute right under our Constitution not to testify. The fact either of the defendants did not testify must not be discussed or considered by you in any way when deliberating and in arriving at your verdict. No inference of any kind may be drawn from the fact that a defendant decided to exercise his or her privilege under the Constitution and did not testify.

The law never imposes upon a defendant the burden or duty of calling any witnesses or of producing any evidence.

INSTRUCTION NO. (IF APPLICABLE)

You should judge the testimony of a defendant in the same manner as the testimony of any other witness.

INSTRUCTION NO.

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

INSTRUCTION NO.

[SUBSTANTIVE INSTRUCTIONS]

INSTRUCTION NO.

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

INSTRUCTION NO.

Upon retiring to the jury room, you must elect one of your members to act as your foreperson. The foreperson will preside over your deliberations and will be your spokesperson here in court.

The verdict must represent the collective judgment of the jury. In order to return a verdict, it is necessary that each juror agree to it. Your verdict as to each count and each defendant 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 violating your own, individual judgment. Each of you must decide the case for yourself, but do so only after an impartial consideration of the evidence with your fellow jurors. In the course of your deliberations, do not hesitate to re-examine your own views 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 for the purpose of returning a unanimous verdict.

Remember at all times, you are not partisans. You are judges—judges of the facts. Your sole interest is to seek the truth from the evidence.

Your verdict must be based solely upon the evidence received. Nothing said in these instructions and nothing in any form of verdict prepared for your convenience is to suggest or convey to you in any way what verdict I think you should return. The verdict is the exclusive duty and responsibility of the jury. Your duty, not mine.

A verdict form has been prepared for you. The original verdict form is included in the binder with the original instructions. You each have copies of the instructions and verdict form for your personal use and convenience, and you may mark these.

You will take the instructions and verdict form to the jury room. When you have reached a unanimous agreement as to your verdict as to each count and each defendant, your foreperson will fill in, date and sign the verdict form upon which you have unanimously agreed. When you have reached unanimous agreement as to your verdict, the foreperson shall inform the court security officer and you shall return to the courtroom with the verdict form.

INSTRUCTION NO.

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.

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.

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.

However, I do ask that you notify me by a note when you plan to recess for the evening and when you intend to reconvene in the morning.

INSTRUCTION NO.

These original instructions will accompany you to the jury room. Do not write on the original instructions. Enter your verdict only on the original verdict form. Do not concern yourselves with the numbering of the instructions, their sequence, or any gap in numbering. Instructions are numbered only for clerical convenience while the instructions are prepared.

INSTRUCTION NO. (IF APPLICABLE)

Juror[s] [XX and XX (is an/are)] alternate juror[s]. You have been seated, selected and served until now with the other jurors. But as Jurors 1 – 12 retire to deliberate, you will be excused from attendance at court, but not from your oath as a juror. You may be called to substitute for one of the jurors and therefore may not:

* read or listen to anything touching on this case in any way;
* perform any research or investigation about the case or the subjects in the case;
* talk to anyone about the case;
* discuss the evidence in the case; or
* talk to any of the parties, the lawyers, or witnesses about anything.

If an alternate replaces a juror after deliberations have begun, the jury must begin its deliberations anew.

You will receive a call from the jury administrator if you are required to return to participate in deliberations, or when the jury has reached a verdict. When the jury has reached a verdict, with or without you, you will be excused from your duties in the case and from the restrictions in this instruction, but until then you are bound by those instructions.

**POST-VERDICT INSTRUCTION**

Your duty as jurors is complete. You are discharged from service. Thank you for your service. You have been extraordinarily diligent. 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.

Just so you know, your notes and jury instruction copies must be left in the jury room to be destroyed.

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

You may be contacted by parties to the case, or their attorneys, or media representatives. 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.

The United States Supreme Court has stated that “full and frank discussion in the jury room, jurors’ willingness to return an unpopular verdict, and the community’s trust in a system that relies on the decisions of lay people would all be undermined by a barrage of post-verdict scrutiny of juror conduct.”[[1]](#footnote-1)

The rules of evidence provide that the only legitimate inquiry of jurors is “whether: (A) extraneous prejudicial information was improperly brought to the jury’s attention; (B) an outside influence was improperly brought to bear on any juror; or (C) a mistake was made in entering the verdict on the verdict form.”[[2]](#footnote-2) And in that instance, the verdict may be defective. Nothing else about the jury discussion or deliberation would be admissible in court.

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.

1. *Tanner v.* *United States*, 483 U.S. 107, 120–21 (1987) (citing96 Harv. L. Rev. 886, 888-892 (1983)). [↑](#footnote-ref-1)
2. Fed. R. Evid. 606(b)(2). [↑](#footnote-ref-2)