in the UNITED STATES DISTRICT COURT

DISTRICT OF UTAH, CENTRAL DIVISION

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| |  | | --- | | UNITED STATES OF AMERICA,  Plaintiffs, | | | Case No. |
| vs. |  | Judge David Sam |
| , | |
| |  |  | | --- | --- | | Defendant, | ts. | | |
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PRELIMINARY JURY INSTRUCTIONS

INSTRUCTION NO. \_\_\_\_\_\_

MEMBERS OF THE JURY:

You have been selected and sworn as the jury to try the case of *United States of America vs..*

This is a criminal case. Defendant was charged with . The elements of these crime will be explained to you later.

The defendant has pled "not guilty" to the indictment. The government, therefore, has the burden of proving each of the essential elements of the charge beyond a reasonable doubt. It is your solemn responsibility to determine if the government has proved its accusation beyond a reasonable doubt against the defendant. Your verdict must be based solely on the evidence, or lack of evidence, and the law. A defendant has a right to remain silent and never has to prove innocence or present any evidence.

The accusing document is called an "indictment". The indictment is simply the description of the charge made by the government against the defendant; it is not evidence and is not to be considered by you as any proof of guilt.

It is the judge's responsibility to decide which laws apply to this case and to explain those laws to you. It is your responsi­bility to decide what the facts of this case may be, and to apply the law to those facts. Thus, the province of the jury and the province of the court are well defined, and they do not overlap. This is one of the fundamental principles of our system of justice.

Before proceeding further, it might be helpful if you understand how a trial is conducted.

At the beginning of the trial, the lawyers will have an opportunity, if they wish, to make an opening statement. The opening statement gives the lawyers a chance to tell you what evidence they believe will be presented during the trial. What the lawyers say is not evidence, and you are not to consider it as such.

Following the opening statements, witnesses will be called to testify under oath. They will be examined and cross-examined by the lawyers. Documents and other exhibits also may be produced as evidence.

After the evidence has been presented, the lawyers will have an opportunity to make their closing arguments following which the court will instruct you on the law applicable to the case. You will then go to the jury room where you will discuss the evidence and reach a verdict. Keep an open mind until then.

INSTRUCTION NO.

The procedures by which a defendant is placed on trial are accusations only and not evidence. You must not infer guilt or make any presumption because a defendant is held for trial.

INSTRUCTION NO.

After the evidence has been heard and arguments and instruc­tions are concluded, you will retire to consider your verdict. You will determine the facts from all the testimony that you hear and the other evidence that is submitted. You are the sole and exclusive judges of the facts, and in that field, neither I nor anyone else may interfere.

On the other hand, and with equal emphasis, I instruct you that you are bound to accept the rules of law that I give you.

INSTRUCTION NO.

Our laws and constitution require you to presume the innocence of a person accused of a crime. So long as a reasonable doubt exists, you must find the defendant "not guilty". This presumption of innocence is binding upon you and may not be disregarded by you, but may be overcome only by proof beyond a reasonable doubt. The presumption is intended to guard against the danger of an innocent person being punished.

INSTRUCTION NO.

There are rules of evidence which control what can be received into evidence. When a lawyer asks a question or offers an exhibit into evidence, and a lawyer on the other side thinks that it is not permitted by the rules of evidence, that lawyer may object. If I overrule the objection, the question may be answered or the exhibit received. If I sustain the objection, the question cannot be answered and the exhibit cannot be received. Whenever I sustain an objection to a question, ignore the question and do not guess what the answer would have been.

Sometimes I may order that evidence be stricken from the record and that you disregard or ignore the evidence. That means that when you are deciding the case, you must not consider that evidence which I told you to disregard.

INSTRUCTION NO.

During the trial I will be required to make rulings about the evidence. Those rulings concern legal questions which are my sole responsibility. You should be careful not to allow yourselves to be influenced by my rulings. If I receive evidence after it is objected to by one of the lawyers, that only means that you may have that evidence for your consider­ation. What weight or value you place upon it is still for you to determine.

You must not disfavor a lawyer who makes a legal objection to evidence, for it is his/her duty as a lawyer to make objections.

INSTRUCTION NO.

There are two kinds of evidence: direct and circumstantial. Direct evidence is testimony by a witness about what that witness personally saw, heard or did. Circumstantial evidence is indirect evidence, that is, it is proof of one or more facts from which one can find another fact.

You may consider both direct and circumstantial evidence in deciding this case. The law permits you to give equal weight to both, but it is for you to decide how much weight to give to any evidence.

INSTRUCTION NO.

Some evidence is admitted for a limited purpose only. When I instruct you that an item of evidence has been admitted for a limited purpose, you must consider it only for that limited purpose and for no other.

INSTRUCTION NO.

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

The court may take judicial notice of certain facts or events. When the court declares it will take judicial notice of some fact or event, the jury must, unless otherwise instructed, accept the court's declaration as evidence, and regard as proved the fact or event which has been judicially noticed.

Unless you are otherwise instructed, the evidence in the case always consists of the sworn testimony of the witnesses, regardless of who may have called them; and all exhibits received in evidence, regardless of who may have produced them; and all facts which may have been admitted, stipulated or judicially noticed.

Unless you are otherwise instructed, anything you may have seen or heard outside of the courtroom is not evidence, and must be entirely disregarded.

INSTRUCTION NO.

During the course of a trial, I occasionally ask questions of a witness in order to bring out facts not yet fully covered in the testimony. Do not assume that I hold any opinion on the matters to which my question may have related. Remember at all times that you, as jurors, are at liberty to consider what evidence you deem relevant in arriving at your own findings as to the facts.

INSTRUCTION NO.

It is the duty of the court to admonish an attorney who, out of zeal for this case, does something which is not in keeping with the rules of evidence or procedure.

You are to draw no inference against the side to whom an admonition of the court may have been addressed during the trial of this case.

INSTRUCTION NO.

You are to determine what witnesses to believe and what parts of each witnesses' testimony you believe and what weight or value you place upon the testimony of each. In making these determina­tions, you might like to consider some or all of the following:

1) the demeanor and deportment of the witness in the courtroom;

2) the witness' interest in the result of the trial;

3) any tendency to favor or disfavor one side or the other;

4) the probability or improbability of events having occurred the way the witness describes the events;

5) was the witness actually able to see or hear or otherwise perceive the things described;

6) can this witness now accurately recall the things the witness observed;

7) is the witness able to describe what he observed accu­rately and in a form that you can understand;

8) did the witness make earlier statements or expressions which are consistent or inconsistent with what is now being said;

9) does the witness speak the truth or not.

Whatever tests you use, the value of a witness' testimony is for you to determine.

INSTRUCTION NO.

From time to time during the trial it may become necessary for me to talk with the lawyers out of the hearing of the jury, either by having a conference at the bench when the jury is present in the courtroom, or by calling a recess. Please under­stand that while you are waiting, we are working. The purpose of these conferences is not to keep relevant information from you, but to decide how certain evidence is to be treated under the rules of evidence and to avoid confusion and error. We will, of course, do what we can to keep the number and length of these conferences to a minimum. I may not always grant a request for a conference. Do not consider my granting or denying a request for a conference as any indication of my opinion of the case or of what your verdict should be.

INSTRUCTION NO.

At the end of the trial, you will have to make your decision based on what you recall of the evidence. You will not have a written transcript to consult, and it is difficult and time consuming for the reporter to read back lengthy testimony. I urge you to pay close attention to the testimony as it is given.

INSTRUCTION NO.

If you wish, you may take notes to help you remember what a witness said. If you do take notes, please keep them to yourself until you and your fellow jurors go to the jury room to decide the case. Do not let note-taking distract you so that you do not hear other answers by witnesses. When you leave at night, leave your notes in the jury room.

If you do not take notes, you should rely on your own memory of what was said and not be overly influenced by the notes of other jurors. You who take notes are likewise admonished to not be overly influenced by your notes but to rely on your own memory and the collective memory of the members of the jury impaneled to hear this case.

INSTRUCTION NO.

I will now say a few words about your conduct as jurors. First, do not talk to each other about this case or about anyone or anything which is related to it until the end of the case when you go to the jury room to decide on your verdict. Not talking about this case means not talking about it in any way, including by internet through email, or any social networking or instant communication services such as Facebook or Twitter, and any instant communication device, such as an iPhone or any other device with texting or instant messenger capabilities.

Second, do not talk with anyone else about the case or about anyone who has anything to do with it until the trial has ended and you have been discharged as jurors. "Anyone else" includes members of your family and your friends. You may tell them that you are a juror in a case, but don't tell them anything else about it until after you have been discharged by me. As noted above, not talking includes not communicating by means of any electronic service or device.

Third, if someone should try to talk to you about the case, please report it to me immediately.

Fourth, do not read any news stories or articles or listen to any radio or television reports about the case or about anyone who has anything to do with it. This prohibition extends to accessing news or articles about this case by means of the Internet, or any instant communication service or device, including Facebook, Twitter, and so on.

Fifth, do not do any research or make any investigation about the case on your own.

Sixth, do not make up your mind about what the verdict should be until after you have gone to the jury room to decide the case and you and your fellow jurors have discussed the evidence. Keep an open mind until then.

INSTRUCTION NO.

We are about to take our first overnight break during the trial and I want to remind you of the instruction I gave you earlier. Until the trial is over you are not to discuss this case with anyone, including your fellow jurors, members of your family, people involved in the trial or anyone else. If anyone approaches you and tries to talk to you about the case, please let me know about it immediately. Do not read or listen to any news reports of the trial. Finally, remember to keep an open mind until all the evidence has been received and you have heard the views of your fellow jurors.

If you need to speak with me about anything, simply give a note to the courtroom deputy to give to me.

I may not repeat these things to you before every break that we take, but keep them in mind throughout the trial.