

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.)
)
)
Defendant.)

No. S

JURY INSTRUCTIONS

INSTRUCTION NO.

Members of the jury, now that you have heard all the evidence, it is my duty to instruct you on the law that applies to this case. A copy of these instructions will be available in the jury room for you to consult.

It is your duty to weigh and to evaluate all the evidence received in the case and, in that process, to decide the facts. It is also your duty to apply the law as I give it to you to the facts as you find them, whether you agree with the law or not. You must decide the case solely on the evidence and the law and must not be influenced by any personal likes or dislikes, opinions, prejudices, or sympathy. You will recall that you took an oath promising to do so at the beginning of the case.

You must follow all these instructions and not single out some and ignore others; they are all important. Please do not read into these instructions or into anything I may have said or done any suggestion as to what verdict you should return—that is a matter entirely up to you.

INSTRUCTION NO.

The superseding indictment is not evidence. The defendant has plead not guilty to the charges. The defendant is presumed to be innocent unless and until the government proves the defendant guilty beyond a reasonable doubt.

INSTRUCTION NO.

Because of the presumption of innocence, a defendant does not have to prove innocence. The burden of proof is always on the government and never shifts to the defendant.

The burden on the government is to prove every element of the charges beyond a reasonable doubt. Proof beyond a reasonable doubt is proof that leaves you firmly convinced that the defendant is guilty. It is not required that the government prove guilt beyond all possible doubt.

A reasonable doubt is a doubt based upon reason and common sense and is not based purely on speculation. It may arise from a careful and impartial consideration of all the evidence, or from lack of evidence.

If after a careful and impartial consideration of all the evidence, you are not convinced beyond a reasonable doubt that a defendant is guilty, it is your duty to find that defendant not guilty. However, if after a careful and impartial consideration of all the evidence, you are convinced beyond a reasonable doubt that a defendant is guilty, it is your duty to find that defendant guilty.

If you believe that the evidence reasonably permits two conclusions - that the defendant is guilty, or that the defendant is not guilty - you must find the defendant not guilty.

INSTRUCTION NO.

A defendant in a criminal case has a constitutional right not to testify. You may not draw any inference of any kind from the fact that the defendant did not testify.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

INSTRUCTION NO.

The evidence you are to consider in deciding what the facts are consists of:

- (1) the sworn testimony of any witness;
- (2) the exhibits received into evidence; and
- (3) any facts to which the parties have agreed.

1 INSTRUCTION NO.

2 In reaching your verdict you may consider only the testimony
3 and exhibits received into evidence. The following things are not
4 evidence and you may not consider them in deciding what the facts
5 are:

6 1. Questions, statements, objections, and arguments by the
7 lawyers are not evidence. The lawyers are not witnesses.
8 Although you must consider a lawyer's questions to understand
9 the answers of a witness, the lawyer's questions are not
10 evidence. Similarly, what the lawyers have said in their
11 opening statements, closing arguments and at other times is
12 intended to help you interpret the evidence, but it is not
13 evidence. If the facts as you remember them differ from the
14 way the lawyers state them, your memory of them controls.

15 2. Any testimony that I have excluded, stricken, or
16 instructed you to disregard is not evidence. In addition,
17 some evidence was received only for a limited purpose; when
18 I have instructed you to consider certain evidence in a
19 limited way, you must do so.

20 3. Charts and summaries shown to you in order to help explain
21 the evidence in the case. These charts and summaries were not
22 admitted in evidence and will not go into the jury room with
23 you. They are not themselves evidence or proof of any facts.
24 If they do not correctly reflect the facts or figures shown by
25 the evidence in the case, you should disregard the charts and
26 summaries and determine the facts from the underlying evidence.

27 ////

28 ////

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

4. Anything you may have seen or heard when the court was not in session is not evidence. You are to decide the case solely on the evidence received at the trial.

INSTRUCTION NO.

Evidence may be direct or circumstantial. Direct evidence is direct proof of a fact, such as testimony by a witness about what that witness personally saw or heard or did. Circumstantial evidence is indirect evidence, that is, it is proof of one or more facts from which you could find another fact.

You are to consider both direct and circumstantial evidence. Either can be used to prove any fact. The law makes no distinction between the weight to be given to either direct or circumstantial evidence. It is for you to decide how much weight to give to any evidence.

1 INSTRUCTION NO.

2 In deciding the facts in this case, you may have to decide
3 which testimony to believe and which testimony not to believe. You
4 may believe everything a witness says, or part of it, or none of it.

5 In considering the testimony of any witness, you may take into
6 account:

- 7 1. the witness's opportunity and ability to see or hear or
8 know the things testified to;
- 9 2. the witness's memory;
- 10 3. the witness's manner while testifying;
- 11 4. the witness's interest in the outcome of the case, if any;
- 12 5. the witness's bias or prejudice, if any;
- 13 6. whether other evidence contradicted the witness's
14 testimony;
- 15 7. the reasonableness of the witness's testimony in light of
16 all the evidence; and
- 17 8. any other factors that bear on believability.

18 The weight of the evidence as to a fact does not necessarily
19 depend on the number of witnesses who testify. What is important is
20 how believable the witnesses were, and how much weight you think
21 their testimony deserves. You are here only to determine whether
22 the defendant is guilty or not guilty of the charges in the
23 Superseding Indictment. The defendant is not on trial for any
24 conduct or offense not charged in the Superseding Indictment.

INSTRUCTION NO.

A separate crime is charged against the defendant in each count. You must decide each count separately. Your verdict on one count should not control your verdict on any other count.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

INSTRUCTION NO.

You have heard testimony from a person who, because of education or experience, was permitted to state opinions and the reasons for his opinions.

Such opinion testimony should be judged like any other testimony. You may accept it or reject it, and give it as much weight as you think it deserves, considering the witness's education and experience, the reasons given for the opinion, and all the other evidence in the case.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

INSTRUCTION NO.

An act is done knowingly if the defendant is aware of the act and does not act through ignorance, mistake, or accident. The government is not required to prove that the defendant knew that his acts or omissions were unlawful. You may consider evidence of the defendant's words, acts, or omissions, along with all the other evidence, in deciding whether the defendant acted knowingly.

INSTRUCTION NO.

A person has possession of something if the person knows of its presence and has physical control of it, or knows of its presence and has the power and intention to control it.

More than one person can be in possession of something if each knows of its presence and has the power and intention to control it.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

INSTRUCTION NO.

1
2 When you begin your deliberations, elect one member of the jury
3 as your foreperson who will preside over the deliberations and speak
4 for you here in court.

5 You will then discuss the case with your fellow jurors to reach
6 agreement if you can do so. Your verdict, whether guilty or not
7 guilty, must be unanimous.

8 Each of you must decide the case for yourself, but you should
9 do so only after you have considered all the evidence, discussed it
10 fully with the other jurors, and listened to the views of your
11 fellow jurors.

12 Do not be afraid to change your opinion if the discussion
13 persuades you that you should. But do not come to a decision simply
14 because other jurors think it is right.

15 It is important that you attempt to reach a unanimous verdict
16 but, of course, only if each of you can do so after having made your
17 own conscientious decision. Do not change an honest belief about
18 the weight and effect of the evidence simply to reach a verdict.

1 INSTRUCTION NO.

2 Because you must base your verdict only on the evidence
3 received in the case and on these instructions, I remind you that
4 you must not be exposed to any other information about the case or
5 to the issues it involves. Except for discussing the case with your
6 fellow jurors during your deliberations:

7 Do not communicate with anyone in any way and do not let
8 anyone else communicate with you in any way about the merits of
9 the case or anything to do with it. This includes discussing
10 the case in person, in writing, by phone or electronic means,
11 via email, text messaging, or any Internet chat room, blog,
12 website or other feature. This applies to communicating with
13 your family members, your employer, the media or press, and the
14 people involved in the trial. If you are asked or approached
15 in any way about your jury service or anything about this case,
16 you must respond that you have been ordered not to discuss the
17 matter and to report the contact to the court.

18 Do not read, watch, or listen to any news or media
19 accounts or commentary about the case or anything to do with
20 it; do not do any research, such as consulting dictionaries,
21 searching the Internet or using other reference materials; and
22 do not make any investigation or in any other way try to learn
23 about the case on your own.

24 The law requires these restrictions to ensure the parties have
25 a fair trial based on the same evidence that each party has had an
26 opportunity to address. A juror who violates these restrictions
27 jeopardizes the fairness of these proceedings, and a mistrial could
28 result that would require the entire trial process to start over.

1 If any juror is exposed to any outside information, please notify
2 the court immediately. Your verdict must be based solely on the
3 evidence and on the law as I have given it to you in these
4 instructions. However, nothing that I have said or done is intended
5 to suggest what your verdict should be - that is entirely for you to
6 decide.

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

INSTRUCTION NO.

Some of you have taken notes during the trial. Whether or not you took notes, you should rely on your own memory of what was said. Notes are only to assist your memory. You should not be overly influenced by your notes or those of your fellow jurors.

INSTRUCTION NO.

The punishment provided by law for this crime is for the court to decide. You may not consider punishment in deciding whether the government has proved its case against the defendant beyond a reasonable doubt.

INSTRUCTION NO.

A verdict form has been prepared for you. After you have reached unanimous agreement on a verdict, your foreperson should complete the verdict form according to your deliberations, sign and date it, and advise the clerk that you are ready to return to the courtroom.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

INSTRUCTION NO.

1
2 If it becomes necessary during your deliberations to
3 communicate with me, you may send a note through the clerk, signed
4 by any one or more of you. No member of the jury should ever
5 attempt to communicate with me except by a signed writing, and I
6 will respond to the jury concerning the case only in writing or here
7 in open court. If you send out a question, I will consult with the
8 lawyers before answering it, which may take some time. You may
9 continue your deliberations while waiting for the answer to any
10 question. Remember that you are not to tell anyone--including me--
11 how the jury stands, numerically or otherwise, on any question
12 submitted to you, including the question of the guilt of the
13 defendant, until after you have reached a unanimous verdict or have
14 been discharged.