IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF KANSAS

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	**CRIMINAL ACTION**
	)	
v.	)	No.
	)	
	)	
	)	
	)	
Defendant.	)	
	)	

INSTRUCTIONS TO THE JURY

April 2012

Court's Stock Instructions

INSTRUCTION NO. ___

Members of the Jury:

Now that you have heard all of the evidence, it becomes my duty to instruct you on the law applicable to this case. In the interest of clarity, I will read the instructions to you and each of you has a copy of the instructions to use in the jury room.

In any jury trial there are, in effect, two judges. I am one of the judges; the other is the jury. It is my duty to preside over the trial and to determine what testimony and evidence is relevant under the law for your consideration. It is your duty, as judges of the facts, to follow and apply that law to the facts as you find them from the evidence in the case. You are not to single out one instruction alone as stating the law, but you must consider the instructions as a whole. Neither are you to be concerned with the wisdom of any rule of law stated by me. That is, you must not substitute or follow your own notion or opinion as to what the law is or ought to be. It is your duty to apply the law as I give it to you, regardless of the consequences.

INSTRUCTION NO. ___

The indictment in this case charges substantially as follows:

INSTRUCTION NO. ___

An indictment is simply a formal method of accusing a defendant of a crime. It is not evidence of any kind against a defendant, and does not create any presumption or permit any inference of guilt. It is a mere charge or accusation—nothing more and nothing less.

INSTRUCTION NO. ___

The indictment charges that the crime was committed "on or about" a certain date. It is not necessary that the proof establish with certainty the exact date of the alleged crime. It is sufficient if the evidence shows beyond a reasonable doubt that the crime was committed on a date reasonably near the date alleged.

INSTRUCTION NO. ___

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 defendant guilty or not guilty as to one of the crimes charged should not control your verdict as to any other crimes charged. Your verdict with respect to each count of the indictment must be unanimous.

Also, the case of each defendant should be considered separately and individually. The fact that you may find one or more of the defendants guilty or not guilty of any of the crimes charged should not control your verdict as to any other crime or any other defendant. You must give separate consideration to the evidence as to each defendant.

*During this trial, evidence has been received against Defendant ____ which is not admissible against Defendant _____. You may not consider this evidence when deliberating your verdict concerning Defendant _____.

INSTRUCTION NO. ___

Defendant has entered pleas of "not guilty" to each of the charges contained in the indictment. These pleas put in issue every element of the crimes charged, and therefore it is the burden and responsibility of the government to prove beyond a reasonable doubt every element of the crimes charged.

INSTRUCTION NO. ___

The law presumes a defendant to be innocent of crime. This presumption remains with him throughout the trial. Thus, a defendant, although accused, begins the trial with a "clean slate," with no evidence against him and the law permits nothing but legal evidence presented before the jury to be considered in support of any charge against a defendant. The presumption of innocence alone is sufficient to acquit the defendant now on trial, unless the jurors are satisfied of the defendant's guilt beyond a reasonable doubt, from all the evidence.

INSTRUCTION NO. ___

Burden of proof means burden of persuasion. The burden is always upon the government to prove beyond a reasonable doubt every essential element of the crimes charged. In determining whether or not it has met this burden, you must consider all the evidence.

Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the defendant's guilt. It is proof so convincing that you would not hesitate to rely and act upon it in the most important of your own affairs. There are very few things in this world that we know with absolute certainty, and in criminal cases the law does not require proof beyond a shadow of a doubt or proof that overcomes every possible doubt.

A “reasonable doubt” is a real doubt, based upon reason and common sense after careful and impartial consideration of all evidence in the case.

If the government fails to prove defendant’s guilt of a charged offense beyond a reasonable doubt, you must find defendant not guilty of that offense. If you are convinced the government has proved a defendant's guilt beyond a reasonable doubt, you must find defendant guilty of that offense.

INSTRUCTION NO. _____

[Case Instructions]

INSTRUCTION NO. ___

In your deliberations, you must consider only the sworn testimony of the witnesses and the exhibits I admitted into evidence. You must entirely disregard any evidence with respect to which I sustained an objection or which I ordered stricken.

You may consider only the evidence offered in this courtroom, and these instructions I am giving you. You should not rely on any other facts or authority. Specifically, you should not do any computer research on your own about any matters relating to this case, you should not look up words in a dictionary for definitions different or beyond what I give you here, and you should not consult any other similar sources.

Counsels' statements and arguments are not evidence unless they are admissions or stipulations. When the attorneys for both parties agree that a particular fact exists, that is referred to as a "stipulation" and the jury must accept that stipulation as true.

INSTRUCTION NO. _____

You may consider both direct and circumstantial evidence. "Direct evidence" is the testimony of one who asserts actual personal knowledge of a fact, such as an eyewitness. "Circumstantial evidence" is proof of some facts or a chain of facts and circumstances from which you could find that other facts exist, which indicate either the guilt or innocence of a defendant. You are entitled to consider both kinds of evidence. The law does not distinguish between the weight to be given to direct and circumstantial evidence. It requires only that you weigh all of the evidence.

INSTRUCTION NO. _____

Certain testimony has been given in this case by experts; that is, by persons who are specially qualified by experience or training and possess knowledge on matters not common to mankind in general. The law permits such persons to give their opinions regarding such matters. The testimony of experts is to be considered like any other testimony and is to be tried by the same tests, and should receive the same weight and credit as you deem it entitled to, when viewed in connection with all the other facts and circumstances, and its weight and value are questions for you.

INSTRUCTION NO. _____

At times during trial, I ruled on the attorneys' objections to admitting certain items into evidence. Questions relating to the admissibility of evidence are solely questions of law for me. You must not concern yourselves with the reasons for my rulings and do not draw any inferences from my rulings. Consider only the evidence admitted.

Some evidence is admitted for a limited purpose only. When I have instructed you that particular evidence is admitted for a limited purpose, you must consider that evidence only for that purpose and for no other.

Some of the exhibits may contain redactions. The portions of those exhibits have been redacted either because I have excluded the redacted portions from the evidence or because the parties have agreed that the redacted portions should not be admitted. You should disregard any redactions just as you would disregard any other evidence that I have excluded from the record.

INSTRUCTION NO. ___

The weight to be given the evidence is determined not by the number of witnesses or the amount of testimony produced by either side, but by the credibility of the witnesses and the nature and quality of their testimony. The evidence of one witness who is entitled to full credit is sufficient for the proof of any fact in this case, and you would be justified in returning a verdict in accordance with such testimony even though a number of witnesses gave conflicting testimony, if from the consideration of the whole case and the reliability and credibility of the various witnesses you believe the one witness as opposed to the greater number of witnesses.

INSTRUCTION NO. ___

Although you must consider all of the evidence, you are not required to accept all of the evidence as true or accurate.

You are the sole judges of the credibility or "believability" of each witness and the weight to be given to his or her testimony. In weighing the testimony of a witness you should consider the witness's relationship to the government or to the defendant; any interest the witness may have in the outcome of the case; the witness's manner while testifying; the opportunity and ability to observe or acquire knowledge concerning the facts about which the witness testified; the witness's candor, fairness and intelligence; and the extent to which the witness has been supported or contradicted by other credible evidence. You may, in short, accept or reject the testimony of any witness in whole or in part.

When weighing conflicting testimony you should consider whether the discrepancy has to do with a material fact or with an unimportant detail, and should keep in mind that innocent misrecollection—like failure of recollection—is not uncommon.

In addition, while you must consider only the evidence in the case, you are permitted to draw such reasonable inferences from the testimony and exhibits as you feel are justified in the light of common experience. In other words, you may make deductions and reach conclusions which reason and common sense lead you to draw from the facts which have been established by either direct or circumstantial evidence. I caution you, however, that the process of drawing inferences from the evidence is not a matter of guesswork or speculation. In order to return a verdict of guilty, you still must be satisfied that the government has proved the defendant's guilt beyond a reasonable doubt on all of the elements of the offense.

INSTRUCTION NO. ___

The testimony of a witness may be discredited or "impeached" by showing that his or her testimony at trial differs in some significant way from statements this witness made before the trial. This difference may be direct, where the witness's prior statements literally contradict the trial testimony, or it may be indirect, as where a witness provides testimony at trial the witness did not reveal earlier when he or she had the opportunity and reason to speak and did not do so, and, further, does not provide an adequate explanation for the silence. You are to decide if the explanation is adequate.

You are to determine the weight, if any, to be given a witness's testimony whose trial testimony varies from the witness's earlier statements. If you conclude a witness has knowingly testified falsely about any matter, you may distrust that witness's testimony regarding any other matters. You may reject that witness's testimony completely or give it such weight as you think it deserves.

INSTRUCTION NO. ___

In considering the evidence, you are expected to use your good sense; consider the evidence for only those purposes for which it has been admitted, and give it a reasonable and fair construction in the light of your common knowledge of the natural tendencies and inclinations of human beings.

You are to perform your duty without bias as to any party or person. The law does not permit jurors to be governed by sympathy, prejudice, or public opinion. That was the promise you made and the oath you took before being accepted by the parties as jurors and they have the right to expect nothing less.

Keep constantly in mind that it would be a violation of your sworn duty to base a verdict upon anything but the evidence in, and the law applicable to, this case.

INSTRUCTION NO. ___

The defendant did not testify and I remind you that you cannot consider [his] [her] decision not to testify as evidence of guilt. You must understand that the Constitution of the United States grants to a defendant the right to remain silent. That means the right not to testify. That is a constitutional right in this country, it is very carefully guarded, and you must not presume or infer guilt from the fact that a defendant does not take the witness stand and testify or call any witnesses.

Always keep in mind that the law never imposes on a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence.

INSTRUCTION NO. ___

The punishment provided by law for the [crime] [crimes] charged is a matter exclusively within the province of the Court and may not be considered by the jury in any way in deciding whether defendant is guilty or not guilty of the [crime] [crimes] charged.

INSTRUCTION NO. ___

Neither in these instructions, nor in any ruling, action or remark that I have made during the course of this trial, have I intended to interpose any opinion or suggestion as to how I would resolve any of the issues of this case. If I have made any remark that you believe indicates how I would decide this case, I instruct you to disregard such remark.

You will now hear closing arguments from counsel. Because the Government has the burden of proof, it is entitled to split its argument time to go first and last. Following closing arguments, I will have a few remaining instructions to give you concerning your deliberations.

INSTRUCTION NO. _____

Your verdict must represent the considered judgment of each juror. In order to return a verdict, each juror must agree upon the verdict and your verdict must be unanimous.

As jurors, you have a duty 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 considering the evidence impartially with your fellow jurors. In the course of your deliberations, do not hesitate to re-examine your own views and change your opinion if you become convinced that it is wrong. But do not surrender your honest conviction as to the weight or effect of the evidence solely because of the opinion of your fellow jurors, or for the mere purpose of returning a verdict.

You are not partisans. You are judges—judges of facts. Your sole interest is to ascertain the truth from the evidence in the case.

INSTRUCTION NO. ___

The Court has permitted you to take notes during this trial, if you wanted. If you did take notes, remember that any notes that you have taken are only aids to your memory. If your memory differs from your notes, you should rely on your memory and not on the notes. Your notes are not evidence.

If you did not take notes, you should not be influenced by the notes of other jurors but should rely on your independent recollection of the evidence. Even if you did take notes, you should not be unduly influenced by the notes of other jurors if they differ from yours. There can be a tendency to attach too much importance to what someone has written down, but notes are not entitled to any greater weight than the recollection or impression of each juror about the testimony. Remember, something that may not have seemed important at the time, and thus was not written down in your notes, may take on greater importance later in the trial in light of all the evidence presented, the Court's instructions on the law, and the final arguments.

Therefore, don't attach undue importance to your notes, or be unduly influenced by another juror's notes. Your notes are not evidence, and are by no means a complete summary of the trial. They are only an aid to your memory, and it is your collective memory that is your greatest asset in deciding this case.

INSTRUCTION NO. __

A final suggestion by the court—not technically an instruction upon the law—may assist your deliberations. The attitude of jurors at the outset of and during their deliberations is important. It is seldom productive for a juror, immediately upon entering the jury room, to make an emphatic expression of his or her opinion upon the case or to announce a determination to stand for a certain verdict. The reason is obvious: we are all human and it is difficult to recede from a position once definitely stated, even though later convinced it is unsound.

Jurors are selected for the purpose of doing justice. This presupposes and requires deliberation--counseling together in an effort to agree. Have in mind at all times, therefore, that you are a deliberative body, selected to function as judges of the facts in a controversy involving the substantial rights of the parties. You will make a definite contribution to efficient administration of justice when and if you arrive at a just and proper verdict under the evidence which has been adduced. No one can ask more and you will not be satisfied to do less.

INSTRUCTION NO. ___

Upon retiring to the jury room you should first select one of your number to act as your foreperson, who will preside over your deliberations and be your spokesperson here in court. The second thing you should do is read the court's instructions. One of the purposes of the instructions is to guide your deliberations. 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 court's instructions throughout your deliberations. Remember, you are judges of the facts, but you are bound by your oath to follow the law stated in the instructions.

A form of verdict has been prepared for your convenience. When you have reached unanimous agreement as to your verdict, you will have your foreperson fill it in, date and sign it, and then notify my clerk that you have reached a verdict. The foreperson will carry the completed verdict form into the courtroom and hand it to the clerk when instructed to do so.

INSTRUCTION NO. ___

If, during your deliberations, you should desire to communicate with the court, please reduce your message or question to writing, signed by the foreperson or one or more of you, and pass the note to my clerk, who will bring it to my attention. I will then respond as promptly as possible, either in writing or by having you return to the courtroom so that I can address you orally. I caution you, however, with regard to any message or question you might send, that you should never state or specify your numerical division at the time.

During your deliberations, you must also not communicate with, or provide any information to, anyone about this case by any means. None of you should ever attempt to communicate with me about the merits of the case in any way other than by a signed writing. I will not communicate with any of you on any subject involving the merits of the case other than in writing, or orally here in open court.

_____ _____

Date ERIC F. MELGREN
UNITED STATES DISTRICT JUDGE