

INTRODUCTION

Members of the jury, now it is time for me to instruct you about the law that you must follow in deciding this case.

I will start by explaining your duties and the general rules that apply in every criminal case.

Then I will explain the elements, or parts, of the crime that the defendant is accused of committing.

Then I will explain some rules that you must use in evaluating particular testimony and evidence.

And last, I will explain the rules that you must follow during your deliberations in the jury room, and the possible verdicts that you may return.

Please listen very carefully to everything I say.

SOURCE: Sixth Circuit Pattern Criminal Jury Instructions § 1.01 (2007) (Introduction).

JURORS' DUTIES

You have two main duties as jurors. The first one is to decide what the facts are from the evidence that you saw and heard here in court. Deciding what the facts are is your job, not mine, and nothing that I have said or done during this trial was meant to influence your decision about the facts in any way.

Your second duty is to take the law that I give you, apply it to the facts, and decide if the government has proved the defendant guilty beyond a reasonable doubt. It is my job to instruct you about the law, and you are bound by the oath that you took at the beginning of the trial to follow the instructions that I give you, even if you personally disagree with them. This includes the instructions that I gave you before and during the trial, and these instructions. All the instructions are important, and you should consider them together as a whole.

The lawyers have talked about the law during their arguments. But if what they said is different from what I say, you must follow what I say. What I say about the law controls.

Perform these duties fairly. Do not let any bias, sympathy or prejudice that you may feel toward one side or the other influence your decision in any way.

SOURCE: Sixth Circuit Pattern Criminal Jury Instructions § 1.02 (2007) (Jurors' Duties).

PRESUMPTION OF INNOCENCE, BURDEN OF PROOF, REASONABLE DOUBT

As you know, the defendant has pleaded not guilty to the crimes charged in the indictment. The indictment is not any evidence at all of guilt. It is just the formal way that the government tells the defendant what crimes he is accused of committing. It does not even raise any suspicion of guilt.

Instead, the defendant starts the trial with a clean slate, with no evidence at all against him, and the law presumes that he is innocent. This presumption of innocence stays with him unless the government presents evidence here in court that overcomes the presumption, and convinces you beyond a reasonable doubt that he is guilty.

This means that the defendant has no obligation to present any evidence at all, or to prove to you in any way that he is innocent. It is up to the government to prove that he is guilty, and this burden stays on the government from start to finish. You must find the defendant not guilty unless the government convinces you beyond a reasonable doubt that he is guilty.

The government must prove every element of the crimes charged beyond a reasonable doubt. Proof beyond a reasonable doubt does not mean proof beyond all possible doubt. Possible doubts or doubts based purely on speculation are not reasonable doubts. A reasonable doubt is a doubt based on reason and common sense. It may arise from the evidence, the lack of evidence, or the nature of the evidence.

Proof beyond a reasonable doubt means proof which is so convincing that you would not hesitate to rely and act on it in making the most important decisions in your own lives. If you are convinced that the government has proved the defendant guilty beyond a reasonable doubt, say so by returning a guilty verdict. If you are not convinced, say so by returning a not guilty verdict.

SOURCE: Sixth Circuit Pattern Criminal Jury Instructions § 1.03 (2007) (Presumption of Innocence, Burden of Proof, Reasonable Doubt).

EVIDENCE DEFINED

You must make your decision based only on the evidence that you saw and heard here in court. Do not let rumors, suspicions, or anything else that you may have seen or heard outside of court influence your decision in any way.

The evidence in this case includes only what the witnesses said while they were testifying under oath; the exhibits that I allowed into evidence; the stipulations that the lawyers agreed to; and the facts that I have judicially noticed.

Nothing else is evidence. The lawyers' statements and arguments are not evidence. Their questions and objections are not evidence. My legal rulings are not evidence. And my comments and questions are not evidence.

During the trial I did not let you hear the answers to some of the questions that the lawyers asked. I also ruled that you could not see some of the exhibits that the lawyers wanted you to see. And sometimes I ordered you to disregard things that you saw or heard, or I struck things from the record. You must completely ignore all of these things. Do not even think about them. Do not speculate about what a witness might have said or what an exhibit might have shown. These things are not evidence, and you are bound by your oath not to let them influence your decision in any way.

Make your decision based only on the evidence, as I have defined it here, and nothing else.

SOURCE: Sixth Circuit Pattern Criminal Jury Instructions § 1.04 (2007) (Evidence Defined).

CONSIDERATION OF EVIDENCE

You should use your common sense in weighing the evidence. Consider it in light of your everyday experience with people and events, and give it whatever weight you believe it deserves. If your experience tells you that certain evidence reasonably leads to a conclusion, you are free to reach that conclusion.

SOURCE: Sixth Circuit Pattern Criminal Jury Instructions § 1.05 (2007) (Consideration of Evidence).

DIRECT AND CIRCUMSTANTIAL EVIDENCE

Now, some of you may have heard the terms "direct evidence" and "circumstantial evidence."

Direct evidence is simply evidence like the testimony of an eyewitness which, if you believe it, directly proves a fact. If a witness testified that he saw it raining outside, and you believed him, that would be direct evidence that it was raining.

Circumstantial evidence is simply a chain of circumstances that indirectly proves a fact. If someone walked into the courtroom wearing a raincoat covered with drops of water and carrying a wet umbrella, that would be circumstantial evidence from which you could conclude that it was raining.

It is your job to decide how much weight to give the direct and circumstantial evidence. The law makes no distinction between the weight that you should give to either one, or say that one is any better evidence than the other. You should consider all the evidence, both direct and circumstantial, and give it whatever weight you believe it deserves.

SOURCE: Sixth Circuit Pattern Criminal Jury Instructions § 1.06 (2007) (Direct and Circumstantial Evidence).

CREDIBILITY OF WITNESSES

Another part of your job as jurors is to decide how credible or believable each witness was. This is your job, not mine. It is up to you to decide if a witness's testimony was believable, and how much weight you think it deserves. You are free to believe everything that a witness said, or only part of it, or none of it at all. But you should act reasonably and carefully in making these decisions.

Let me suggest some things for you to consider in evaluating each witness's testimony.

Ask yourself if the witness was able to clearly see or hear the events. Sometimes even an honest witness may not have been able to see or hear what was happening, and may make a mistake.

Ask yourself how good the witness's memory seemed to be. Did the witness seem able to accurately remember what happened?

Ask yourself if there was anything else that may have interfered with the witness's ability to perceive or remember the events.

Ask yourself how the witness acted while testifying. Did the witness appear honest? Or did the witness appear to be lying?

Ask yourself if the witness had any relationship to the government or the defendant, or anything to gain or lose from the case, that might influence the witness's testimony. Ask yourself if the witness had any bias, or prejudice, or reason for testifying that might cause the witness to lie or to slant the testimony in favor of one side or the other.

And ask yourself how believable the witness's testimony was in light of all the other evidence. Was the witness's testimony supported or contradicted by other evidence that you found believable? If you believe that a witness's testimony was contradicted by other evidence, remember that people sometimes forget things, and that even two honest people who witness the same event may not describe it exactly the same way.

These are only some of the things that you may consider in deciding how believable each witness was. You may also consider other things that you think shed some light on the witness's believability. Use your common sense and your everyday experience in dealing with other people. And then decide what testimony you believe, and how much weight you think it deserves.

SOURCE: Sixth Circuit Pattern Criminal Jury Instructions § 1.07 (2007) (Credibility of Witnesses).

NUMBER OF WITNESSES

One more point about the witnesses. Sometimes jurors wonder if the number of witnesses who testified makes any difference.

Do not make any decisions based only on the number of witnesses who testified. What is more important is how believable the witnesses were, and how much weight you think their testimony deserves. Concentrate on that, not the numbers.

SOURCE: Sixth Circuit Pattern Criminal Jury Instructions § 1.08 (2007) (Number of Witnesses).

LAWYERS' OBJECTIONS

There is one more general subject that I want to talk to you about before I begin explaining the elements of the crime charged.

The lawyers for both sides objected to some of the things that were said or done during the trial. Do not hold that against either side. The lawyers have a duty to object whenever they think that something is not permitted by the rules of evidence. Those rules are designed to make sure that both sides receive a fair trial.

And do not interpret my rulings on their objections as any indication of how I think the case should be decided. My rulings were based on the rules of evidence, not on how I feel about the case. Remember that your decision must be based only on the evidence that you saw and heard here in court.

SOURCE: Sixth Circuit Pattern Criminal Jury Instructions § 1.09 (2007) (Lawyers' Objections).

INTRODUCTION

That concludes the part of my instructions explaining your duties and the general rules that apply in every criminal case. In a moment, I will explain the elements of the crime that the defendant is accused of committing.

But before I do that, I want to emphasize that the defendant is only on trial for the particular crimes charged in the indictment (and the lesser charges that I will explain to you). Your job is limited to deciding whether the government has proved the crimes charged (or one of those lesser charges).

Also keep in mind that whether anyone else should be prosecuted and convicted for these crimes is not a proper matter for you to consider. The possible guilt of others is no defense to a criminal charge. Your job is to decide if the government has proved this defendant guilty. Do not let the possible guilt of others influence your decision in any way.

SOURCE: Sixth Circuit Pattern Criminal Jury Instructions § 2.01 (2007) (Introduction).

SEPARATE CONSIDERATION – SINGLE DEFENDANT CHARGED WITH MULTIPLE CRIMES

The defendant has been charged with several crimes. The number of charges is no evidence of guilt, and this should not influence your decision in any way. It is your duty to separately consider the evidence that relates to each charge, and to return a separate verdict for each one. For each charge, you must decide whether the government has presented proof beyond a reasonable doubt that the defendant is guilty of that particular charge.

Your decision on one charge, whether it is guilty or not guilty, should not influence your decision on any of the other charges.

SOURCE: Sixth Circuit Pattern Criminal Jury Instructions § 2.01A (2007) (Separate Consideration – Single Defendant Charged with Multiple Crimes).

DEFINITION OF THE CRIMES

Count 1 – Conspiracy to Commit Murder

Count 1 of the indictment accuses the defendant of Conspiracy to Commit Murder in violation of federal law. Conspiracy is a kind of criminal partnership, and it is a crime for two or more persons to conspire, or agree, to commit a criminal act, regardless of whether they actually achieve their goal.

For you to find the defendant guilty of Conspiracy to Commit Murder in Count 1, the government must prove each and every one of the following elements beyond a reasonable doubt:

First, that two or more persons conspired, or agreed, to commit the crime of murder with malice aforethought.

Second, that the defendant knowingly and voluntarily joined the conspiracy.

Third, that a member of the conspiracy did one of the overt acts described in the indictment for the purpose of advancing or helping the conspiracy.

Fourth, that the conspiracy took place outside the United States.

Fifth, that the conspiracy took place while the defendant was a member of the Armed Forces subject to the Uniform Code of Military Justice.

And Sixth, that the defendant's conspiracy to commit murder would constitute an offense punishable by imprisonment for more than 1 year if the conduct had been engaged in within the special maritime and territorial jurisdiction of the United States. As a matter of law, I instruct you that Conspiracy to Commit Murder is punishable by imprisonment for more than 1 year if the conduct had been engaged in within the special maritime and territorial jurisdiction of the United States.

You must be convinced that the government has proved all of these elements beyond a reasonable doubt in order to find the defendant guilty of the conspiracy charged in Count 1.

SOURCE: Sixth Circuit Pattern Jury Instructions § 3.01A (2007) (Conspiracy to Commit an Offense – Basic Elements); MEJA, 18 U.S.C. § 3261(a)(2).

Count 2 – Conspiracy to Commit Aggravated Sexual Abuse

Count 2 of the indictment accuses the defendant of Conspiracy to Commit Aggravated Sexual Abuse in violation of federal law.

For you to find the defendant guilty of Conspiracy to Commit Aggravated Sexual Abuse in Count 2, the government must prove each and every one of the following elements beyond a reasonable doubt:

First, that two or more persons conspired, or agreed, to commit the crime of aggravated sexual abuse.

Second, that the defendant knowingly and voluntarily joined the conspiracy.

Third, that a member of the conspiracy did one of the overt acts described in the indictment for the purpose of advancing or helping the conspiracy.

Fourth, that the conspiracy took place outside the United States.

Fifth, that the conspiracy took place while the defendant was a member of the Armed Forces subject to the Uniform Code of Military Justice.

And Sixth, that the defendant's conspiracy to commit Aggravated Sexual Abuse would constitute an offense punishable by imprisonment for more than 1 year if the conduct had been engaged in within the special maritime and territorial jurisdiction of the United States. As a matter of law, I instruct you that Conspiracy to Commit Murder is punishable by imprisonment for more than 1 year if the conduct had been engaged in within the special maritime and territorial jurisdiction of the United States.

You must be convinced that the government has proved all of these elements beyond a reasonable doubt in order to find the defendant guilty of the conspiracy charged in Count 2.

SOURCE: Sixth Circuit Pattern Criminal Jury Instructions § 3.01A (2007) (Conspiracy to Commit an Offense – Basic Elements); MEJA, 18 U.S.C. § 3261(a)(2).

AGREEMENT

With regard to the first element – a criminal agreement – the government must prove that two or more persons conspired, or agreed, to cooperate with each other to commit the crime of Murder, as charged in Count 1, and Aggravated Sexual Abuse, as charged in Count 2.

This does not require proof of any formal agreement, written or spoken. Nor does this require proof that everyone involved agreed on all the details. But proof that people simply met together from time to time and talked about common interests, or engaged in similar conduct, is not enough to establish a criminal agreement. These are things that you may consider in deciding whether the government has proved an agreement. But without more they are not enough.

What the government must prove is that there was a mutual understanding, either spoken or unspoken, between two or more people, to cooperate with each other to commit either the crime of Murder or the crime of Aggravated Sexual Abuse, or both. This is essential.

An agreement can be proved indirectly, by facts and circumstances which lead to a conclusion that an agreement existed. But it is up to the government to convince you that such facts and circumstances existed in this particular case.

SOURCE: Sixth Circuit Pattern Criminal Jury Instructions § 3.02 (2007) (Agreement).

DEFENDANT'S CONNECTION TO THE CONSPIRACY

If you are convinced that there was a criminal agreement, then you must decide whether the government has proved that the defendant knowingly and voluntarily joined that agreement. To convict the defendant, the government must prove that he knew the conspiracy's main purpose, and that he voluntarily joined it intending to help advance or achieve its goals.

This does not require proof that a defendant knew everything about the conspiracy, or everyone else involved, or that he was a member of it from the very beginning. Nor does it require proof that the defendant played a major role in the conspiracy, or that his connection to it was substantial. A slight role or connection may be enough.

But proof that the defendant simply knew about a conspiracy, or was present at times, or associated with members of the group, is not enough, even if he approved of what was happening or did not object to it. Similarly, just because a defendant may have done something that happened to help a conspiracy does not necessarily make him a conspirator. These are all things that you may consider in deciding whether the government has proved that the defendant joined a conspiracy. But without more they are not enough.

What the government must prove is that the defendant knew the conspiracy's main purpose, and that he voluntarily joined it intending to help advance or achieve its goals. This is essential.

A defendant's knowledge can be proved indirectly by facts and circumstances which lead to a conclusion that he knew the conspiracy's main purpose. But it is up to the government to convince you that such facts and circumstances existed in this particular case.

SOURCE: Sixth Circuit Pattern Criminal Jury Instructions § 3.03 (2007) (Defendant's Connection to the Conspiracy).

OVERT ACTS

The third element that the government must prove is that a member of the conspiracy did one of the overt acts described in the indictment for the purpose of advancing or helping the conspiracy.

The indictment lists overt acts. The government does not have to prove that all these acts were committed, or that any of these acts were themselves illegal.

But the government must prove that at least one of these acts was committed by a member of the conspiracy, and that it was committed for the purpose of advancing or helping the conspiracy. This is essential.

SOURCE: Sixth Circuit Pattern Criminal Jury Instructions § 3.04 (2007) (Overt Acts).

UNINDICTED, UNNAMED OR SEPARATELY TRIED CO-CONSPIRATORS

Now, some of the people who may have been involved in these events are not on trial. This does not matter. There is no requirement that all members of a conspiracy be charged and prosecuted, or tried together in one proceeding.

SOURCE: Sixth Circuit Pattern Criminal Jury Instructions § 3.06 (2007) (Unindicted, Unnamed or Separately Tried Co-Conspirators).

DEFINITIONS OF THE CRIMES (CONT'D)

Counts 3, 4, 5, and 6 – Premeditated Murder

Counts 3, 4, 5, and 6 of the indictment accuse the defendant of Premeditated Murder of Abeer Kassem Hamza Al-Janabi, Hadeel Kassem Hamza Al-Janabi, Kassem Hamza Rachid Al-Janabi, and Fakhriya Taha Mohsine Al-Janabi in violation of federal law. Murder is the unlawful killing of a human being with malice aforethought.

The defendant can be found guilty of the crimes charged in Counts 3, 4, 5, and 6 only if all of the following facts are proved beyond a reasonable doubt:

First, that the person named in each count was killed;

Second, that the defendant caused the death of the person named in each count with “malice aforethought;”

Third, that the defendant did so with “premeditated intent;”

Fourth, that the killing of the person named in each count occurred outside the United States;

Fifth, that the killing of the person named in each count occurred while the defendant was a member of the Armed Forces subject to the Uniform Code of Military Justice;

And Sixth, that the killing of the person named in each count would constitute an offense punishable by imprisonment for more than 1 year if the conduct had been engaged in within the special maritime and territorial jurisdiction of the United States. On this point, I am instructing you that as a matter of law, the crime of murder is punishable by imprisonment for more than 1 year if the conduct had been engaged in within the special maritime and territorial jurisdiction of the United States.

You must be convinced that the government has proved all of these elements for each count beyond a reasonable doubt in order to find the defendant guilty of Premeditated Murder in Counts 3, 4, 5, or 6.

To kill with “malice aforethought” means an intent at the time of the killing to take the life of another person, either deliberately and intentionally, or to willfully act with callous and wanton disregard for human life.

The government need not prove that the defendant hated the persons killed or felt ill will toward the victims at the time, but the evidence must establish beyond a reasonable doubt that the defendant acted either with the intent to kill or to willfully do acts with callous and wanton disregard for the consequences and which the defendant knew would result in a serious risk of death or serious bodily harm.

Killing with “premeditated intent” is required in addition to proof of malice aforethought in order to establish the offense of first degree murder. Premeditation is typically associated with killing in cold blood and requires a period of time in which the accused deliberates, or thinks the matter over, before acting.

The law does not specify or require any exact period of time that must pass between the formation of the intent to kill and the killing itself. It must be long enough for the killer, after forming the intent to kill, to be fully conscious of that intent.

You must be convinced that the government has proved all of these elements beyond a reasonable doubt in order to find the defendant guilty of the Premeditated Murder charge in Counts 3, 4, 5, or 6.

SOURCE: Eleventh Circuit Pattern Jury Instructions § 45.1 (2003); MEJA, 18 U.S.C. § 3261(a)(2); Sixth Circuit Pattern Jury Instructions § 3.01A (2007).

Counts 7, 8, 9, and 10 – Felony Murder

Federal law makes it a crime for anyone to murder another human being during the perpetration of, or the attempted perpetration of, the crime of aggravated sexual abuse. The Defendant can be found guilty of Felony Murder in this case only if all of the following facts are proved beyond a reasonable doubt:

First, that the persons named in each count was killed.

Second, that the defendant caused the death of the persons named.

Third, that the death of the person occurred as a consequence of and while the defendant was knowingly and willfully engaged in perpetrating or attempting to perpetrate the crime of aggravated sexual abuse.

Fourth, that the murder of the named persons occurred outside the United States.

Fifth, that the murder of the named persons occurred while the defendant was a member of the Armed Forces subject to the Uniform Code of Military Justice.

And Sixth, that the murders would constitute an offense punishable by imprisonment for more than 1 year if the conduct had been engaged in within the special maritime and territorial jurisdiction of the United States. As a matter of law, I instruct you that the crime of murder is punishable by imprisonment for more than 1 year if the conduct had been engaged in within the special maritime and territorial jurisdiction of the United States.

The crime charged here is known as a "felony murder" – that is, a killing that occurs during the knowing and willful commission of some other, specified felony offense. It is not necessary, therefore, for the government to prove that the defendant had any premeditated design or intent to kill the victim.

It is sufficient if the government proves beyond a reasonable doubt that the defendant knowingly and willfully committed, or attempted to commit, the crime of aggravated sexual abuse as charged in Count 11 of the indictment, and that the killing of the victim occurred during, and as a consequence of, the defendant's commission of, or attempted commission of that crime.

You must be convinced that the government has proved all of these elements beyond a reasonable doubt in order to find the defendant guilty of Felony Murder in Counts 7, 8, 9, or 10.

SOURCE: Eleventh Circuit Pattern Jury Instructions § 45.2 (2003); MEJA, 18 U.S.C. § 3261(a)(2); Sixth Circuit Pattern Jury Instructions § 3.01A (2007).

Count 11 – Aggravated Sexual Abuse

Federal law makes it a crime to sexually abuse another person by using force or threats. The Defendant can be found guilty of that offense only if all of the following facts are proved beyond a reasonable doubt:

First, that the defendant caused Abeer Kassem Hamza Al-Janabi to engage in a sexual act;

Second, that the defendant did so by using force against her or by threatening or placing her in fear that she, or any other person, would be subjected to death, serious bodily injury, or kidnapping.

Third, that the defendant did such acts knowingly.

Fourth, that the aggravated sexual abuse occurred outside the United States.

Fifth, that the aggravated sexual abuse occurred while the defendant was a member of the Armed Forces subject to the Uniform Code of Military Justice.

And Sixth, that the aggravated sexual abuse would constitute an offense punishable by imprisonment for more than 1 year if the conduct had been engaged in within the special maritime and territorial jurisdiction of the United States. As a matter of law, I instruct you that the crime of murder is punishable by imprisonment for more than 1 year if the conduct had been engaged in within the special maritime and territorial jurisdiction of the United States.

The term "sexual act" means:

Contact between the penis and the vulva or the penis and the anus, and contact involving the penis occurs upon penetration however slight; or

Contact between the mouth and the penis, the mouth and the vulva, or the mouth and the anus; or

Penetration, however slight, of the anal or genital opening of another by a hand or finger or by any object, with an intent to abuse, humiliate, harass, degrade, or to arouse or gratify the sexual desire of the defendant or any other person.

The term "serious bodily injury" means bodily injury that involves a substantial risk of death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

You must be convinced that the government has proved all of these elements beyond a reasonable doubt in order to find the defendant guilty of Aggravated Sexual Abuse as charged in Count 11.

SOURCE: Eleventh Circuit Pattern Jury Instructions § 74 (2003); MEJA, 18 U.S.C. § 3261(a)(2); Sixth Circuit Pattern Jury Instructions § 3.01A (2007).

Count 12 – Aggravated Sexual Abuse with Children

The defendant is charged in Count 12 of the indictment with Aggravated Sexual Abuse of a Child in violation of federal law. In order for the defendant to be found guilty of that charge, the government must prove each of the following beyond a reasonable doubt:

First, the defendant knowingly engaged in a sexual act with Abeer Kassem Hamza Al-Janabi.

Second, at the time, Abeer Kassem Hamza Al-Janabi was at least 12 years old but younger than 16 years old.

Third, at the time, Abeer Kassem Hamza Al-Janabi was at least four years younger than the defendant.

Fourth, the aggravated sexual abuse occurred outside the United States.

Fifth, the aggravated sexual abuse occurred while the defendant was a member of the Armed Forces subject to the Uniform Code of Military Justice.

And Sixth, that the aggravated sexual abuse would constitute an offense punishable by imprisonment for more than 1 year if the conduct had been engaged in within the special maritime and territorial jurisdiction of the United States. As a matter of law, I instruct you that the crime of murder is punishable by imprisonment for more than 1 year if the conduct had been engaged in within the special maritime and territorial jurisdiction of the United States.

The term "sexual act" means:

Contact between the penis and the vulva or the penis and the anus, and contact involving the penis occurs upon penetration however slight; or

Contact between the mouth and the penis, the mouth and the vulva, or the mouth and the anus; or

Penetration, however slight, of the anal or genital opening of another by a hand or finger or by any object, with an intent to abuse, humiliate, harass, degrade, or to arouse or gratify the sexual desire of the defendant or any other person.

You must be convinced that the government has proved all of these elements beyond a reasonable doubt in order to find the defendant guilty of Aggravated Sexual Abuse with Children as charged in Count 12.

SOURCE: Ninth Circuit Pattern Jury Instructions § 8.137 (2003) (Aggravated Sexual Abuse of Child – 18 U.S.C. § 2241(c)); Eleventh Circuit Pattern Jury Instructions § 74 (2003) (18 U.S.C. § 2241(c)); MEJA, 18 U.S.C. § 3261(a)(2).

Counts 13, 14, 15, and 16 – Use of a Firearm During a Crime of Violence

Counts 13, 14, 15, and 16 of the indictment charge the defendant with violating federal law by the Use of a Firearm During a Crime of Violence. For you to find the defendant guilty of these crimes, you must find that for each count the government has proved every one of the following elements beyond a reasonable doubt:

First, the defendant committed the crime identified in each Count. (For example: Count 13 requires that the defendant committed the crime of the Premeditated Murder of Abeer Kassem Hamza Al-Janabi charged in Count 3; Count 14 requires that the defendant committed the crime of Premeditated Murder of Hadeel Kassem Hamza Al-Janabi charged in Count 4; Count 15 requires that the defendant committed the crime of Premeditated Murder of Kassem Hamza Rachid Al-Janabi charged in Count 5; and Count 16 requires that the defendant committed the crime of Premeditated Murder of Fakhriya Taha Mohsine Al-Janabi charged in Count 6.) Premeditated Murder is a crime of violence which may be prosecuted in a court of the United States.

Second, the defendant knowingly used or carried a firearm in committing the crime identified in each Count.

Third, the use or carrying of the firearm was during and in relation to the crime identified in each Count.

Fourth, the defendant's use or carrying of the firearm during and in relation to the crime identified in each Count occurred outside the United States.

Fifth, the defendant's use or carrying of the firearm during and in relation to the crime identified in each Count occurred while the defendant was a member of the Armed Forces subject to the Uniform Code of Military Justice.

And Sixth, the defendant's use or carrying of the firearm during and in relation to the crime identified in each Count would constitute an offense punishable by imprisonment for more than 1 year if the conduct had been engaged in within the special maritime and territorial jurisdiction of the United States. As a matter of law, I instruct you that this crime is punishable by imprisonment for more than 1 year if the conduct had been engaged in within the special maritime and territorial jurisdiction of the United States.

Now I will give you more detailed instructions on some of these terms.

To establish "use," the government must prove active employment of the firearm during and in relation to the crime identified in each Count. "Active employment" means activities such as brandishing, displaying, bartering, striking with, and most obviously, firing or attempting to fire, a firearm. "Use" also includes a person's reference to a firearm in his possession for the purpose of helping to commit the crime identified in each Count. "Use" requires more than mere possession or storage.

“Carrying” a firearm includes carrying it on or about one’s person.

The term “firearm” means any weapon which will or is designed to or may readily be converted to expel a projectile by the action of an explosive.

The term “during and in relation to” means that the firearm must have some purpose or effect with respect to the crime identified in each Count; in other words, the firearm must facilitate or further, or have the potential of facilitating or furthering the crime identified in each Count, and its presence or involvement cannot be the result of accident or coincidence.

The term “knowingly” means voluntarily and intentionally, and not because of mistake or accident.

You must be convinced that the government has proved all of these elements beyond a reasonable doubt in order to find the defendant guilty for the Use of a Firearm During a Crime of Violence as charged in Counts 13, 14, 15, or 16.

SOURCE: Sixth Circuit Pattern Jury Instructions §§ 12.2, 3.01A (2003); MEJA, 18 U.S.C. § 3261(a)(2).

Count 17 – Obstruction of Justice

Count 17 of the indictment charges the defendant with violating federal law by Obstruction of Justice. For you to find the defendant guilty of this crime, you must find that the government has proved each and every one of the following elements beyond a reasonable doubt:

First, the defendant corruptly destroyed, mutilated, or concealed objects, or attempted to corruptly destroy, mutilate, or conceal objects.

Second, that the defendant did so knowingly.

Third, that the defendant did so with the intent to impair the object's integrity or availability for use in an official proceeding.

An "official proceeding" means a proceeding before a judge or court of the United States or a federal grand jury. However, the defendant need not know that the proceeding was a federal proceeding. Further, it is not necessary that a proceeding actually be pending or about to be instituted.

You must be convinced that the government has proved all of these elements beyond a reasonable doubt in order to find the defendant guilty of Obstruction of Justice as charged in Count 17.

SOURCE: 18 U.S.C. §§ 1512(c)(1), 1512(f)(1), and 1515(a)(1); Sixth Circuit Pattern Jury Instructions § 3.01A (2007).

ON OR ABOUT

Next, I want to say a word about the date mentioned in the indictment.

The indictment charges that the crime happened "on or about" March 12, 2006. The government does not have to prove that the crime happened on that exact date. But the government must prove that the crime happened reasonably close to that date.

SOURCE: Sixth Circuit Pattern Criminal Jury Instructions § 2.04 (2007) (On or About).

INFERRING REQUIRED MENTAL STATE

Next, I want to explain something about proving a defendant's state of mind.

Ordinarily, there is no way that a defendant's state of mind can be proved directly, because no one can read another person's mind and tell what that person is thinking.

But a defendant's state of mind can be proved indirectly from the surrounding circumstances. This includes things like what the defendant said, what the defendant did, how the defendant acted, and any other facts or circumstances in evidence that show what was in the defendant's mind.

You may also consider the natural and probable results of any acts that the defendant knowingly did, and whether it is reasonable to conclude that the defendant intended those results. This, of course, is all for you to decide.

SOURCE: Sixth Circuit Pattern Criminal Jury Instructions § 2.08 (2007) (Inferring Required Mental State).

AIDING AND ABETTING

For you to find the defendant guilty of Premeditated Murder, Felony Murder, Aggravated Sexual Abuse, Aggravated Sexual Abuse with Children, Use of a Firearm During a Crime of Violence, or Obstruction of Justice, it is not necessary for you to find that he personally committed the crime. You may also find him guilty if he intentionally helped or encouraged someone else to commit the crime. A person who does this is called an aider and abettor.

But for you to find the defendant guilty of Premeditated Murder, Felony Murder, Aggravated Sexual Abuse, Aggravated Sexual Abuse with Children, Use of a Firearm During a Crime of Violence, or Obstruction of Justice as an aider and abettor, you must be convinced that the government has proved each and every one of the following elements beyond a reasonable doubt:

First, that the crime identified in Counts 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, or 17 was committed.

Second, that the defendant helped to commit the crime or encouraged someone else to commit the crime.

Third, that the defendant intended to help commit or encourage the crime.

Fourth, that the defendant's conduct in helping or encouraging the crime took place outside the United States.

Fifth, that the defendant's conduct in helping or encouraging the crime took place while the defendant was a member of the Armed Forces subject to the Uniform Code of Military Justice.

And Sixth, that the defendant's conduct in helping or encouraging the crime would constitute an offense punishable by imprisonment for more than 1 year if the conduct had been engaged in within the special maritime and territorial jurisdiction of the United States. As a matter of law, I instruct you that Aiding and Abetting the crimes identified in Counts 3 - 17 is punishable by imprisonment for more than 1 year if the conduct had been engaged in within the special maritime and territorial jurisdiction of the United States.

Proof that the defendant may have known about the crime, even if he was there when it was committed, is not enough for you to find him guilty. You can consider this in deciding whether the government has proved that he was an aider and abettor, but without more it is not enough.

What the government must prove is that the defendant did something to help or encourage the crime with the intent that the crime be committed.

You must be convinced that the government has proved all of these elements beyond a reasonable doubt in order to find the defendant guilty of Aiding and Abetting as charged in Counts 3-17.

SOURCE: Sixth Circuit Pattern Criminal Jury Instructions §§ 4.01, 3.01A (2007) (Aiding and Abetting); 18 U.S.C. § 3261(a)(2).

ATTEMPT – BASIC ELEMENTS

Counts 11, 12, and 17 of the indictment accuse the defendant of violating federal law by attempting to commit the crimes of Aggravated Sexual Abuse, Aggravated Sexual Abuse with Children, and Obstruction of Justice. Under the law, it is not necessary for you to find that the defendant actually succeeded in committing these crimes. You may also find him guilty of each crime if he attempted to commit the crime.

For you to find the defendant guilty of Attempt, you must be convinced that the government has proved all of the following elements beyond a reasonable doubt:

First, that the defendant intended to commit the crime of Aggravated Sexual Abuse (as charged in Count 11), or Aggravated Sexual Abuse with Children (as charged in Count 12), or Obstruction of Justice (as charged in Count 17).

Second, that the defendant did some overt act that was a substantial step towards committing the crimes of Aggravated Sexual Abuse, Aggravated Sexual Abuse with Children, or Obstruction of Justice.

Third, that the defendant's conduct in attempting to commit the crime took place outside the United States.

Fourth, that the defendant's conduct in attempting to commit the crime took place while the defendant was a member of the Armed Forces subject to the Uniform Code of Military Justice.

And Fifth, that the defendant's conduct in attempting to commit the crime would constitute an offense punishable by imprisonment for more than 1 year if the conduct had been engaged in within the special maritime and territorial jurisdiction of the United States. As a matter of law, I instruct you that Attempted Aggravated Sexual Abuse (Count 11), Attempted Aggravated Sexual Abuse with Children (Count 12), or Attempted Obstruction of Justice (Count 17) are crimes punishable by imprisonment for more than 1 year if the conduct had been engaged in within the special maritime and territorial jurisdiction of the United States.

Merely preparing to commit a crime is not a substantial step. The defendant's conduct must go beyond mere preparation, and must strongly confirm that he intended to commit the crimes charged in Counts 11, 12, or 17. But the government does not have to prove that the defendant did everything except the last act necessary to complete the crime. A substantial step beyond mere preparation is enough.

You must be convinced that the government has proved all of these elements beyond a reasonable doubt in order to find the defendant guilty of Attempt as charged in Counts 11, 12, or 17.

SOURCE: Sixth Circuit Pattern Criminal Jury Instructions §§ 5.01, 3.01A, 4.01 (2007);
MEJA, 18 U.S.C. § 3261(a)(2).

INTRODUCTION

That concludes the part of my instructions explaining the elements of the crime. Next I will explain some rules that you must use in considering some of the testimony and evidence.

SOURCE: Sixth Circuit Pattern Criminal Jury Instructions § 7.01 (2007) (Introduction).

DEFENDANT'S ELECTION NOT TO TESTIFY OR PRESENT EVIDENCE

A defendant has an absolute right not to testify. The fact that he did not testify cannot be considered by you in any way. Do not even discuss it in your deliberations.

Remember that it is up to the government to prove the defendant guilty beyond a reasonable doubt. It is not up to the defendant to prove that he is innocent.

SOURCE: Sixth Circuit Pattern Criminal Jury Instructions § 7.02A (2007) (Defendant's Election Not to Testify).

DEFENDANT'S TESTIMONY

You have heard the defendant testify. Earlier, I talked to you about the "credibility" or the "believability" of the witnesses. And I suggested some things for you to consider in evaluating each witness's testimony.

You should consider those same things in evaluating the defendant's testimony.

SOURCE: Sixth Circuit Pattern Criminal Jury Instructions § 7.02B (2007) (Defendant's Testimony).

TESTIMONY OF AN ACCOMPLICE

You have heard the testimony of _____. You have also heard that he was involved in the same crime that the defendant is charged with committing. You should consider _____'s testimony with more caution than the testimony of other witnesses.

Do not convict the defendant based on the unsupported testimony of such a witness, standing alone, unless you believe his testimony beyond a reasonable doubt.

The fact that _____ has pleaded guilty to a crime is not evidence that the defendant is guilty, and you cannot consider this against the defendant in any way.

SOURCE: Sixth Circuit Pattern Criminal Jury Instructions § 7.08 (2007) (Testimony of an Accomplice).

IDENTIFICATION TESTIMONY

You have heard the testimony of _____, who has identified the defendant as the person who _____. You should carefully consider whether this identification was accurate and reliable.

In deciding this, you should especially consider if the witness had a good opportunity to see the person at that time. For example, consider the visibility, the distance, whether the witness had known or seen the person before, and how long the witness had to see the person.

Consider all these things carefully in determining whether the identification was accurate and reliable.

Remember that the government has the burden of proving beyond a reasonable doubt that the defendant was the person who committed the crime charged.

SOURCE: Sixth Circuit Pattern Criminal Jury Instructions § 7.11 (2007) (Identification Testimony).

TRANSCRIPTIONS OF TAPE RECORDINGS

You have heard some tape recordings that were received in evidence, and you were given some written transcripts of the tapes.

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 tapes themselves are the evidence. If you noticed any differences between what you heard on the tapes and what you read in the transcripts, you must rely on what you heard, not what you read. And if you could not hear or understand certain parts of the tapes, you must ignore the transcripts as far as those parts are concerned.

SOURCE: Sixth Circuit Pattern Criminal Jury Instructions § 7.17 (2007) (Transcriptions of Tape Recordings).

INTRODUCTION

That concludes the part of my instructions explaining the rules for considering some of the testimony and evidence. Now let me finish up by explaining some things about your deliberations in the jury room, and your possible verdicts.

The first thing that you should do in the jury room is choose someone to be your foreperson. This person will help to guide your discussions, and will speak for you here in court.

Once you start deliberating, do not talk to the jury officer, or to me, or to anyone else except each other about the case. If you have any questions or messages, you must write them down on a piece of paper, sign them, and then give them to the jury officer. The officer will give them to me, and I will respond as soon as I can. I may have to talk to the lawyers about what you have asked, so it may take me some time to get back to you. Any questions or messages normally should be sent to me through your foreperson.

One more thing about messages. Do not ever write down or tell anyone how you stand on your votes. For example, do not write down or tell anyone that you are split 6-6, or 8-4, or whatever your vote happens to be. That should stay secret until you are finished.

SOURCE:Sixth Circuit Pattern Criminal Jury Instructions § 8.01 (2007) (Introduction).

EXPERIMENTS, RESEARCH AND INVESTIGATION

Remember that you must make your decision based only on the evidence that you saw and heard here in court. Do not try to gather any information about the case on your own while you are deliberating.

For example, do not conduct any experiments inside or outside the jury room; do not bring any books, like a dictionary, or anything else with you to help you with your deliberations; do not conduct any independent research, reading or investigation about the case; and do not visit any of the places that were mentioned during the trial.

Make your decision based only on the evidence that you saw and heard here in court.

SOURCE: Sixth Circuit Pattern Criminal Jury Instructions § 8.02 (2007) (Experiments, Research and Investigation).

UNANIMOUS VERDICT

Your verdict, whether it is guilty or not guilty, must be unanimous.

To find the defendant guilty, every one of you must agree that the government has overcome the presumption of innocence with evidence that proves his guilt beyond a reasonable doubt.

To find him not guilty, every one of you must agree that the government has failed to convince you beyond a reasonable doubt.

Either way, guilty or not guilty, your verdict must be unanimous.

SOURCE: Sixth Circuit Pattern Criminal Jury Instructions § 8.03 (2007) (Unanimous Verdict).

DUTY TO DELIBERATE

Now that all the evidence is in and the arguments are completed, you are free to talk about the case in the jury room. In fact, it is your duty to talk with each other about the evidence, and to make every reasonable effort you can to reach unanimous agreement. Talk with each other, listen carefully and respectfully to each other's views, and keep an open mind as you listen to what your fellow jurors have to say. Try your best to work out your differences. Do not hesitate to change your mind if you are convinced that other jurors are right and that your original position was wrong.

But do not ever change your mind just because other jurors see things differently, or just to get the case over with. In the end, your vote must be exactly that – your own vote. It is important for you to reach unanimous agreement, but only if you can do so honestly and in good conscience.

No one will be allowed to hear your discussions in the jury room, and no record will be made of what you say. So you should all feel free to speak your minds.

Listen carefully to what the other jurors have to say, and then decide for yourself if the government has proved the defendant guilty beyond a reasonable doubt.

SOURCE: Sixth Circuit Pattern Criminal Jury Instructions § 8.04 (2007) (Duty to Deliberate).

PUNISHMENT

If you decide that the government has proved the defendant guilty, then and only then will you consider, in a separate hearing, the issue of penalty.

Deciding punishment is not an issue in your present deliberations. It would violate your oaths as jurors to even consider the possible punishment in deciding your verdict on whether the defendant is guilty of the charged offenses.

Your job is to look at the evidence and decide if the government has proved the defendant guilty beyond a reasonable doubt.

SOURCE: Sixth Circuit Pattern Criminal Jury Instructions § 8.05 (2007) (Punishment) (modified to incorporate jurors' duties in the penalty phase of this case).

VERDICT FORM

I have prepared a verdict form that you should use to record your verdict. The form reads as follows: _____.

If you decide that the government has proved the charge against the defendant beyond a reasonable doubt, say so by having your foreperson mark the appropriate place on the form. If you decide that the government has not proved the charge against him beyond a reasonable doubt, say so by having your foreperson mark the appropriate place on the form. Your foreperson should then sign the form, put the date on it, and return it to me.

SOURCE: Sixth Circuit Pattern Criminal Jury Instructions § 8.06 (2007)(Verdict Form).

VERDICT LIMITED TO CHARGES AGAINST THIS DEFENDANT

Remember that the defendant is only on trial for the particular crimes charged in the indictment. Your job is limited to deciding whether the government has proved the crimes charged.

Also remember that whether anyone else should be prosecuted and convicted for this crime is not a proper matter for you to consider. The possible guilt of others is no defense to a criminal charge. Your job is to decide if the government has proved this defendant guilty. Do not let the possible guilt of others influence your decision in any way.

SOURCE: Sixth Circuit Pattern Criminal Jury Instructions § 8.08 (2007) (Verdict Limited to Charges against this Defendant).

COURT HAS NO OPINION

Let me finish up by repeating something that I said to you earlier. Nothing that I have said or done during this trial was meant to influence your decision in any way. You decide for yourselves if the government has proved the defendant guilty beyond a reasonable doubt.

SOURCE: Sixth Circuit Pattern Criminal Jury Instructions § 8.09 (2007) (Court Has No Opinion).

JUROR NOTES

Remember that if you elected to take notes during the trial, your notes should be used only as memory aids. You should not give your notes greater weight than your independent recollection of the evidence. You should rely upon your own independent recollection of the evidence or lack of evidence and you should not be unduly influenced by the notes of other jurors. Notes are not entitled to any more weight than the memory or impression of each juror.

Whether you took notes or not, each of you must form and express your own opinion as to the facts of the case.

SOURCE: Sixth Circuit Pattern Criminal Jury Instructions § 8.10 (2007)(Juror Notes).