IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

INSTRUCTIONS FOR PROPOSED JURY CHARGES FOR CRIMINAL CASES BEFORE JUDGE LYDON	§ § §	**STANDING ORDER**

All proposed jury instructions are required to be submitted in the following format:

a) The parties are required to jointly submit one set of instructions, and are therefore required to serve their proposed instructions upon each other in time to confer and submit to the Court one complete set of agreed-upon joint instructions, as well as any disputed supplemental instructions, five (5) business days prior to jury selection. Joint instructions should be e-mailed to lydon_ecf@scd.uscourts.gov. Do not electronically file in ECF. Please include the case number in the subject line of the e-mail message.

b) The court's preliminary boilerplate jury instructions are attached. Only the applicable instructions will be applied to a particular case. It is not necessary for attorneys to submit proposed instructions as to the matters contained in the attached instructions. If the parties in good faith believe that the standard instructions need to be tailored for the trial of the case, they may submit such modified instructions for the Court's review.

c) If the parties cannot agree upon one entire set of joint instructions, they are required to submit joint instructions that have been agreed upon (labeled as Joint Request to Charge No. ____), and to submit supplemental instructions that have not been agreed upon (appropriately labeled as Plaintiff's Request to Charge No. ___ or Defendant's Request to Charge No. ___). Legal authority should be cited in all instructions. Each supplemental instruction should list any party requesting the instructions as well as any party's objection to the instruction. Along with the notation of the party objecting to or requesting the

instruction, the supplemental instruction should cite the legal authority in support of the requested instruction and the specific basis for each objection to the instruction. Objections should specifically and concisely set forth the objectionable material in the proposed instruction. The numbering of supplemental instruction should begin where the agreed-upon joint instructions end. A sample of each type of instruction (agreed-upon and objected-to) is attached for your reference.

d) If legal authority is cited that is not reported in the Southeastern Reporter or Federal Reporters, copies of cited authority should be attached to the requested instruction.

e) All instructions should be concise, understandable, and neutral statements of law. Argumentative or formula instructions are improper, will not be given, and should not be submitted.

f) Failure to comply with any of the above instructions may subject the noncomplying party and/or its attorneys to sanctions.

s\Sherri A. Lydon
Sherri A. Lydon
United States District Judge

January 2, 2020

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Members of the Jury:

It is now my duty to instruct you on the rules of law that you must follow and apply in deciding this case. When I have finished, you will go to the jury room and begin your discussions—what we call your deliberations. You will have a written copy of these instructions on the law with you in your jury room during your deliberations. You will also have with you all of the exhibits that were received into evidence.

It will be your duty to decide whether the government has proved beyond a reasonable doubt the specific facts necessary to find the defendants guilty of each crime charged in the indictment.

PRESUMPTION OF INNOCENCE

The law presumes a defendant to be innocent, and the presumption of innocence alone is sufficient to acquit a defendant, unless the jury is satisfied beyond a reasonable doubt of the defendant's guilt after careful and impartial consideration of the evidence introduced at trial.

A defendant has no obligation to establish his or her innocence. The burden is always upon the prosecution to prove guilt beyond a reasonable doubt, and this burden never shifts to the defendant. If the jury, after careful and impartial consideration of all the evidence, has a reasonable doubt that a defendant was guilty

of the particular charge under consideration, you must find that defendant not guilty of that charge.

If, on the other hand, the jury finds that the evidence is sufficient to overcome the presumption of innocence and to convince you beyond a reasonable doubt of the guilt of the defendant of the charge under consideration, it must find the defendant guilty of that charge.

BURDEN OF PROOF/REASONABLE DOUBT

The government must prove each element of the crimes charged to each and every one of you beyond a reasonable doubt. If the government fails to prove an element beyond a reasonable doubt, then you must find that that element has not been proven and find the defendant not guilty. While the government's burden of proof is a strict and heavy burden, it is not necessary that it be proved beyond all possible doubt. It is only required that the government's proof exclude any reasonable doubt concerning that element. A reasonable doubt may arise not only from the evidence produced, but also from a lack of evidence. The defendant never has the burden of disproving the existence of anything which the government must prove beyond a reasonable doubt. The burden is wholly upon the government. The law does not require the defendant to produce any evidence.

EVIDENCE

Evidence can come in many forms. It can be testimony about what the witness saw, heard, tasted, touched, or smelled, something that came to the witness's knowledge through his senses. Evidence can be an exhibit admitted into evidence. Evidence can be a person's opinion. Some evidence proves a fact directly, such as testimony of a witness who saw a jet plane flying across the sky. Some evidence proves a fact indirectly, such as testimony of a witness who saw only the white trail that jet planes often leave. This indirect evidence is sometimes referred to as circumstantial evidence. In either instance, the witness's testimony is evidence that a jet plane flew across the sky.

Circumstantial evidence is evidence of facts and circumstances from which one may infer connected facts which reasonably follow in the common experience of mankind. Circumstantial evidence is evidence which tends to prove a disputed fact by proof of another fact or other facts which have a logical tendency to lead the mind to the conclusion that the disputed fact has been established.

Circumstantial evidence is treated no differently than direct evidence, and may be sufficient to support a verdict of guilty, even though it does not exclude every reasonable hypothesis consistent with innocence.

The following are not evidence: arguments and statements by the lawyers, questions and objections by the lawyers, testimony that was stricken or that you have

been instructed to disregard, comments or questions by me, and anything that you may have seen or heard when the court was not in session.

During the trial, items were received into evidence as exhibits. The exhibits will be sent into the jury room with you when you begin to deliberate. Examine the exhibits if you think it would help you in your deliberations.

CREDIBILITY OF WITNESSES

You are the sole judges of the believability of each witness, and of the importance the testimony of each witness deserves. You should carefully scrutinize all of the testimony of each witness, the circumstances under which the witness testified, and every matter in evidence which tends to indicate whether a witness is worthy of belief.

Consider each witness's intelligence, motive to testify falsely, state of mind, and appearance and manner while on the witness stand.

Consider the witness's ability to observe the matters about which the witness has testified and consider whether the witness impresses you as having an accurate memory of the matters about which the witness testified.

Inconsistencies or discrepancies in the testimony of a witness or between the testimony of different witnesses may or may not cause you to disbelieve or discredit such testimony. Two or more persons witnessing an incident or a transaction may simply see or hear it differently. Innocent misrecollection, like failure of

recollection, is not an uncommon human experience. In weighing the effect of a discrepancy, however, always consider whether the discrepancy pertains to a matter of importance or to an insignificant detail and consider whether the discrepancy results from innocent error or from intentional falsehood.

Consider also any relation each witness might have to or be affected by the verdict and the extent to which, if at all, each witness is either supported or contradicted by other evidence in the case. Credibility is not merely choosing between one witness or another. As to each witness you are free to reject all that testimony, accept all that testimony, or as a third alternative reject some part and accept some other part of his or her testimony. A witness is not more believable simply because he or she is a government witness or agent.

The weight of the evidence is not necessarily to be determined by the number of witnesses testifying to the existence or nonexistence of any fact. You may find that the testimony of a smaller number of witnesses as to a fact is more persuasive than that of a greater number of witnesses, or you may find that they are not persuasive at all.

IMPEACHMENT — INCONSISTENT STATEMENT AND FELONY CONVICTION

You should also ask yourself whether there was evidence tending to prove that the witness testified falsely concerning some important fact; or, whether there

was evidence that at some other time the witness said or did something, or failed to say or do something, which was different from the testimony he or she gave before you during the trial.

The fact that a witness has been convicted of a felony offense, or a crime involving dishonesty or false statement, is another factor you may consider in deciding whether you believe his or her testimony.

You should keep in mind, of course, that a simple mistake by a witness does not necessarily mean that the witness was not telling the truth as he or she remembers it, because people naturally tend to forget some things or remember other things inaccurately. So, if a witness has made a misstatement, you need to consider whether that misstatement was simply an innocent lapse of memory or an intentional falsehood; and that may depend on whether it has to do with an important fact or with only an unimportant detail.

CREDIBILITY-LAW ENFORCEMENT

In considering the testimony of a witness who is a police officer or agent of the government, you may not give more weight to the testimony of a police officer or agent of the government than you give to the testimony of other witnesses for the mere reason that the witness is a police officer or an agent of the government.

WHEN A DEFENDANT DECIDES TO TESTIFY

When a defendant testifies, he or she becomes as any other witness, and you, the jury, should determine the defendant's believability or credibility as you would any other witness.

OR

DEFENDANTS' RIGHT NOT TO TESTIFY

The law does not compel a defendant in a criminal case to take the witness stand and testify, and no presumption of guilt may be raised, and no inference of any kind may be drawn, from the failure of a defendant to testify.

As stated before, the law never imposes upon a defendant in a criminal case the burden or duty of calling witnesses or producing any evidence.

VOLUNTARY CONFESSION

You have heard that the defendant made a statement to law enforcement officials. Whether such a statement was voluntarily given and, if so, what weight to give it is entirely up to you. In other words, these are questions of fact which are up to a jury to decide.

In determining whether the statement was voluntary and what weight to give it, if any, you should consider what we call "the totality of the circumstances." You may consider, for example, whether the statement was induced by any promise or

threat. You may also consider any other factor which your common sense tells you is relevant to the issue of voluntariness.

TAPES AND TRANSCRIPTS

Tape recordings of certain conversations have been admitted into evidence. A transcript of the conversations has been prepared. The tape and not the transcript is the evidence, and therefore the transcript is not in evidence. The transcript is to be used only as a guide in following the tape. Your understanding of the tape, rather than the transcript, is to govern your deliberations.

The transcripts are not evidence but merely aids to follow the voices on the tape and you are bound by your own recollection of what you heard on the tape, and not what you read in the transcript. If you detect any discrepancy between the transcript and the tape, you are to consider as evidence only what you hear on the tape.

You will notice that a complete record of the trial and all of the testimony is being made by the Court Reporter; but you should not expect to have typewritten transcripts of the trial available to you during your deliberations. Should you need to rehear testimony in your deliberations; the court will make it available by other means.

COOPERATING WITNESSES

The use of cooperators is common and permissible. The government also is permitted to recommend a reduced sentence in exchange for a cooperator's cooperation. The testimony of a cooperator, someone who provides evidence against someone else for money or for other personal reason or advantage, must be examined and weighed by you with greater care and caution than the testimony of a witness who is not so motivated.

You should not concern yourself with why the government made such an agreement with the witness. Your concern is whether the witness has given truthful testimony. You should not convict the defendants upon the unsupported testimony of such a witness unless you believe that testimony beyond a reasonable doubt.

You must determine whether the cooperator's testimony has been affected by self-interest, or by the agreement he or she has with the government, or his or her own interest in the outcome of this case, or by prejudice against the defendant or defendants. If you conclude that the furnishing of consideration to the cooperator was fully or partially contingent upon the content of his or her testimony at trial or upon a finding of guilt, then you should subject his or her testimony to an even higher degree of scrutiny.

You should not draw any conclusion or inference of any kind about the guilt of the defendants on trial from the fact that a witness pled guilty to a similar crime.

That witness's decision to plead guilty was a personal decision about his own guilt. It may not be used by you in any way as evidence against or unfavorable to the defendants on trial here.

EXPERT WITNESS TESTIMONY

You have heard what is called "expert witness testimony." Witnesses who by education or experience have acquired learning or experience in a science or specialized area of knowledge are sometimes referred to as "expert witnesses." Such witnesses are permitted to give their opinions as to relevant matters in their area of expertise and give their reasons for their opinions. Expert testimony is presented to you on the theory that someone who is experienced in the field may assist you in understanding the evidence or reaching an independent decision of the facts.

Your role in judging credibility applies to experts as well as to other witnesses. You should consider any expert opinion which was received in evidence in this case and give it as much or as little weight as you think it deserves. If you should decide that the opinion of an expert was not based on sufficient education or experience or on sufficient data, or if you should conclude that the trustworthiness or credibility of an expert is questionable for any reason, or if the opinion of the expert was outweighed, in your judgment, by other evidence in the case, then you may disregard the opinion of the expert entirely or in part.

On the other hand, if you find the opinion of an expert is based on sufficient data, education, and experience, and the other evidence does not give you reason to doubt his or her conclusions, you would be justified in placing reliance on this testimony.

SEARCHES

You have received evidence about items seized in searches. Evidence obtained from the searches was properly admitted in this case, and may be considered by you. Whether you approve or disapprove of how it was obtained should not enter into your deliberations because I instruct you that the government's use of this evidence is lawful.

MULTIPLE COUNTS

A separate crime or offense is charged in each count of the indictment. Each charge, and the evidence pertaining to it, should be considered separately.

You must consider each count and the evidence relating to it separate and apart from every other count. You should return a separate verdict as to each count. Your verdict on any count should not control your verdict on any other count.

MULTIPLE DEFENDANTS

It is your duty to give separate, personal consideration to the case of each individual defendant. When you do so, you should analyze what the evidence in the case shows with respect to that individual, leaving out of consideration entirely any evidence admitted solely against the other defendant.

ON OR ABOUT

The indictment alleges that certain illegal activity happened on or about a certain date, dates, or time frame. The government need not prove with certainty the exact date of the alleged offense. It is sufficient if the illegal activity happened during a period of time reasonably near the date alleged in the indictment.

PROOF MAY BE DISJUNCTIVE

You might notice that the indictment Counts that will be a part of these instructions use the word "and" in describing the charges, but in my instructions, I tell you that the government need prove only one thing "or" the other thing. Do not be confused by this ─ just go by the instructions that I give you. When the indictment uses the word "and," I instruct you to read it as if it said "and/or."

SYMPATHY

Under your oath as jurors you are not to be swayed by sympathy. You are to be guided solely by the evidence in this case, and the crucial question that you must

ask yourselves as you sift through the evidence is the following: has the government proved the guilt of the defendant beyond a reasonable doubt?

It is for you alone to decide whether the government has proved that the defendant is guilty of the crime charged solely on the basis of the evidence and subject to the law as I charge you. It must be clear to you that once you let fear, prejudice, bias, or sympathy interfere with your thinking there is a risk that you will not arrive at a true and just verdict.

If you have a reasonable doubt as to the defendant's guilt, you should not hesitate for any reason to find a verdict of not-guilty. But on the other hand, if you should find that the government has met its burden of proving the defendant guilty beyond a reasonable doubt, you should not hesitate for any reason to render a verdict of guilty.

PUNISHMENT

The question of possible punishment of the defendant is of no concern to the jury and should not, in any sense, enter into or influence your deliberations. If the defendant is found guilty, the duty of imposing a sentence rests exclusively upon the court. Your function is to weigh the evidence in the case and to determine whether or not the government has proved that the defendant is guilty beyond a reasonable doubt, solely upon the basis of such evidence. Under your oath as jurors, you cannot

allow a consideration of the punishment that may be imposed upon the defendant if he or she is convicted to influence your verdict in any way or to enter into your deliberations.

INVESTIGATIVE TECHNIQUES

Questions might be raised about the government's failure to use, or its decision not to employ, certain investigative techniques. You may consider these facts in deciding whether the government has met its burden of proof, because you should look to all of the evidence—or lack of evidence—in deciding whether the defendant is guilty.

However, I also instruct you that there is no legal requirement that the government use any specific investigative techniques to prove its case. Therefore, the government is not required to present such evidence for you to find the defendant guilty. Your concern is whether the evidence which was admitted proves the defendants' guilt beyond a reasonable doubt.

DUTY TO DELIBERATE

When you return to the jury room, you should choose a foreperson. The foreperson will preside over the deliberations and speak for the jury here in court.

In conducting your deliberations and returning your verdict, there are certain rules you must follow. It is your duty, as jurors, to discuss this case with one another

in the jury room. You should try to reach an agreement if you can do so without doing violence to individual judgment, because a verdict must be unanimous. Each of you must make your own conscientious decision, but only after you have considered all the evidence, discussed it fully with your fellow jurors, and listened to the views of your fellow jurors. Do not be afraid to change your opinions if the discussion persuades you that you should, but do not come to a decision simply because other jurors think it is right or simply to reach a verdict. Remember at all times that you are not partisans. You are judges of the facts. Your sole interest is to determine the truth from the evidence in the case.

Your verdict must be based solely on the evidence and on the law that I have given to you in my instructions. You must perform your duty and obligation without favoritism, passion, or sympathy for any party in the case, and without prejudice against any of the parties. The verdict must be unanimous. Nothing I have said or done is intended to suggest what your verdict should be—that is entirely for you to decide.

During your deliberations, you must not communicate with or provide any information to anyone by any means about this case. You may not use any electronic device or media, such as a telephone, cell phone, smart phone, iPhone, Blackberry or computer, the internet, any internet service, or any text or instant messaging service; or any internet chat room, blog, or website such as Facebook, My Space,

LinkedIn, YouTube, or Twitter, to communicate to anyone any information about this case or to conduct any research about this case until I accept your verdict.

NOTE TAKING

Some of you have taken notes during the trial. Remember that the notes are for your own personal use. They are not to be given or read to anyone else and they are not to be used in place of your memory.

RETURN OF VERDICT

After you have reached unanimous agreement on your verdict, your foreperson will fill in the form that has been given to you, sign and date it and advise the courtroom security officer outside your door that you are ready to return to the courtroom.

COMMUNICATING WITH THE COURT

If it becomes necessary during your deliberations to communicate with me, you may send a note through the courtroom security officer, signed by your foreperson or by one or more members of the jury. No member of the jury should ever attempt to communicate with me except by a signed writing; and I will

communicate with any member of the jury on anything concerning the case only in writing, or orally here in open court. Remember that you are not to tell anyone —including me—how the jury stands, numerically or otherwise, until after you have reached a unanimous verdict or have been discharged.