

**UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION**

<p>UNITED STATES OF AMERICA,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">vs.</p> <p>DAPHNE JANIS,</p> <p style="text-align: center;">Defendant.</p>	<p style="text-align: center;">NO. CR 17-50104-01-KES</p> <p style="text-align: center;">FINAL INSTRUCTIONS TO THE JURY</p>
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VERDICT FORM

FINAL INSTRUCTION NO. 1 – INTRODUCTION

Members of the jury, the written instructions I gave you at the beginning of the trial and the oral instructions I gave you during the trial remain in effect. I now give you some additional instructions.

The instructions I am about to give you, as well as the preliminary instructions given to you at the beginning of the trial, are in writing and will be available to you in the jury room. *All* instructions, whenever given and whether in writing or not, must be followed. This is true even though some of the instructions I gave you at the beginning of the trial are not repeated here.

FINAL INSTRUCTION NO. 2 – IMPEACHMENT

In Preliminary Instruction No. 6, I instructed you generally on the credibility of witnesses. I now give you this further instruction on how the credibility of a witness can be “impeached” and how you may treat certain evidence.

A witness may be discredited or impeached by contradictory evidence; by a showing that the witness testified falsely concerning a material matter; or by evidence that at some other time the witness has said or done something, or has failed to say or do something, that is inconsistent with the witness’s present testimony. If earlier statements of a witness were admitted into evidence, they were not admitted to prove that the contents of those statements were true. Instead, you may consider those earlier statements only to determine whether you think they are consistent or inconsistent with the trial testimony of the witness, and therefore whether they affect the credibility of that witness.

If you believe that a witness has been discredited or impeached, it is your exclusive right to give that witness’s testimony whatever weight you think it deserves.

Your decision on the facts of this case should not be determined by the number of witnesses testifying for or against a party. You should consider all the facts and circumstances in evidence to determine which of the witnesses you choose to believe or not believe. You may find that the testimony of a smaller number of witnesses on one side is more credible than the testimony of a greater number of witnesses on the other side.

FINAL INSTRUCTION NO. 3 – FALSE STATEMENTS RELATING TO HEALTH CARE MATTERS

For you to find Daphne Janis guilty of the offense of False Statement Relating to Health Care Matters as charged in Count I of the Superseding Indictment, the government must prove the following essential three elements beyond a reasonable doubt:

One, that on or about March 1, 2016, through April 27, 2017 Janis falsified, concealed, or covered up by any trick, scheme, or device a material fact;

A representation is “false” if it is known to be untrue or is made with reckless indifference as to its truth or falsity. A representation is also “false” when it constitutes a half truth, or effectively omits or conceals a material fact, provided it is made with the intent to defraud.

A false representation is “material” if it has a natural tendency to influence, or is capable of influencing, the institution to which it is addressed.

Two, that Janis did so in connection with the delivery of or payment for health care benefits, items, or services involving a health care benefit program, namely Tramadol or health care services;

A “health care benefit program” is defined as “any public or private plan or contract, affecting commerce, under which any medical benefit, item, or service is provided to any individual, and includes any individual or entity who is providing a medical benefit, item, or service for which payment may be made under the plan or contract.

And three, that Janis did so knowingly and willfully.

If the government has proven all three of these elements beyond a reasonable doubt, then you must find Janis guilty of the crime charged in Count I of the Superseding Indictment; otherwise, you must find Janis not guilty of that crime.

FINAL INSTRUCTION NO. 4 – FALSE STATEMENTS RELATING TO HEALTH CARE MATTERS

For you to find Daphne Janis guilty of the offense of False Statement Relating to Health Care Matters as charged in Count II of the Superseding Indictment, the government must prove the following essential three elements beyond a reasonable doubt:

One, that on or about September 18, 2015 Janis falsified, concealed, or covered up by any trick, scheme, or device a material fact;

A representation is “false” if it is known to be untrue or is made with reckless indifference as to its truth or falsity. A representation is also “false” when it constitutes a half truth, or effectively omits or conceals a material fact, provided it is made with the intent to defraud.

A false representation is “material” if it has a natural tendency to influence, or is capable of influencing, the institution to which it is addressed.

Two, that Janis did so in connection with the delivery of or payment for health care benefits, items, or services involving a health care benefit program, namely Hydrocodone or health care services;

A “health care benefit program” is defined as “any public or private plan or contract, affecting commerce, under which any medical benefit, item, or service is provided to any individual, and includes any individual or entity who is providing a medical benefit, item, or service for which payment may be made under the plan or contract.

And three, that Janis did so knowingly and willfully.

If the government has proven all three of these elements beyond a reasonable doubt, then you must find Janis guilty of the crime charged in Count II of the Superseding Indictment; otherwise, you must find Janis not guilty of that crime.

FINAL INSTRUCTION NO. 5 – OBTAIN CONTROLLED SUBSTANCE BY FRAUD

For you to find Daphne Janis guilty of the offense of Obtaining a Controlled Substance by Fraud as charged in Count III of the Superseding Indictment, the government must prove the following three essential elements beyond a reasonable doubt:

One, that on or about March 1, 2016, through April 27, 2017, Janis acquired or obtained possession of Tramadol, or attempted to do so;

A person may be found guilty of an attempt if she intended to acquire or obtain possession of Tramadol and voluntarily and intentionally carried out some act which was a substantial step toward acquiring or obtaining possession of Tramadol.

Two, that Janis did so by misrepresentation, fraud, deception, or subterfuge;

And three, that Janis did so knowingly or intentionally.

If the government has proven all three of these elements beyond a reasonable doubt, then you must find Janis guilty of the crimes charged in Count III of the Superseding Indictment; otherwise, you must find Janis not guilty of that crime.

FINAL INSTRUCTION NO. 6 – OBTAIN CONTROLLED SUBSTANCE BY FRAUD

For you to find Daphne Janis guilty of the offense of Obtaining a Controlled Substance by Fraud as charged in Count IV of the Superseding Indictment, the government must prove the following three essential elements beyond a reasonable doubt:

One, that on or about September 18, 2015, Janis acquired or obtained possession of Hydrocodone, or attempted to do so;

A person may be found guilty of an attempt if she intended to acquire or obtain possession of Hydrocodone and voluntarily and intentionally carried out some act which was a substantial step toward acquiring or obtaining possession of Hydrocodone.

Two, that Janis did so by misrepresentation, fraud, deception, or subterfuge;

And three, that Janis did so knowingly or intentionally.

If the government has proven all three of these elements beyond a reasonable doubt, then you must find Janis guilty of the crimes charged in Count IV of the Superseding Indictment; otherwise, you must find Janis not guilty of that crime.

FINAL INSTRUCTION NO. 7 – USE OF A COMMUNICATIONS FACILITY TO COMMIT ANOTHER FELONY

For you to find Daphne Janis guilty of the offense of Use of a Communications Facility to Commit Another Felony as charged in Count V of the Superseding Indictment, the government must prove the following two essential elements beyond a reasonable doubt:

One, the Janis knowingly used a communication facility, that is, a telephone;

And two, that Janis did so with the intent to facilitate the commission of the offense of Obtaining a Controlled Substance by Fraud, or attempting to do so, as described in Count III.

You are instructed that Count III, Obtaining Controlled Substance by Fraud, is a felony controlled-substance offense.

A person may be found guilty of an attempt if she intended to facilitate the commission of the offense of Obtaining a Controlled Substance by Fraud and voluntarily and intentionally carried out some act which was a substantial step toward facilitating the commission of the offense.

To facilitate the commission of a felony controlled-substance offense means to make committing the crime easier or less difficult, or to assist or aid. It does not matter whether the felony controlled-substance offense was successfully carried out.

If the government has proven both of these elements beyond a reasonable doubt, then you must find Janis guilty of the crime charged in Count V of the Superseding Indictment; otherwise, you must find Janis not guilty of that crime.

FINAL INSTRUCTION NO. 8 – PROOF OF INTENT

Intent may be proven like anything else. You may consider any statements made or acts done by the defendant and all the facts and circumstances in evidence which may aid in a determination of the defendant's intent.

You may, but are not required to, infer that a person intends the natural and probable consequences of acts knowingly done or knowingly omitted.

FINAL INSTRUCTION NO. 9 – PRESUMPTION OF INNOCENCE AND BURDEN OF PROOF

The presumption of innocence means that the defendant is presumed to be absolutely not guilty.

- This presumption means that you must put aside all suspicion that might arise from the defendant's arrest, the charges, or the fact that she is here in court.
- This presumption remains with the defendant throughout the trial.
- This presumption is enough, alone, for you to find the defendant not guilty, unless the prosecution proves, beyond a reasonable doubt, all of the elements of an offense charged against her.

The burden is always on the prosecution to prove guilt beyond a reasonable doubt.

- This burden never, ever shifts to the defendant to prove her innocence.
- This burden means that the defendant does not have to call any witnesses, produce any evidence, cross-examine the prosecution's witnesses, or testify.
- This burden means that, if the defendant does not testify, you must not consider that fact in any way, or even discuss it, in arriving at your verdict.
- This burden means that you must find the defendant not guilty of the offenses charged against her, unless the prosecution proves beyond a reasonable doubt that she has committed each and every element of the offenses.

FINAL INSTRUCTION NO. 10 – REASONABLE DOUBT

A reasonable doubt is a doubt based upon reason and common sense.

- A reasonable doubt may arise from evidence produced by the prosecution or the defendant, keeping in mind that the defendant never, ever has the burden or duty to call any witnesses or to produce any evidence.
- A reasonable doubt may arise from the prosecution's lack of evidence.

The prosecution must prove the defendant's guilt beyond a reasonable doubt.

- Proof beyond a reasonable doubt requires careful and impartial consideration of all the evidence in the case before making a decision.
- Proof beyond a reasonable doubt is proof so convincing that you would be willing to rely and act on it in the most important of your own affairs.

The prosecution's burden is heavy, but it does not require proof beyond all possible doubt.

FINAL INSTRUCTION NO. 11 – DUTY TO DELIBERATE

A verdict must represent the careful and impartial judgment of each of you. Before you make that judgment, you must consult with one another and try to reach agreement if you can do so consistent with your individual judgment.

- If you are convinced that the prosecution has not proved beyond a reasonable doubt that the defendant is guilty, say so.
- If you are convinced that the prosecution has proved beyond a reasonable doubt that the defendant is guilty, say so.
- Do not give up your honest beliefs just because others think differently or because you simply want to be finished with the case.
- On the other hand, do not hesitate to re-examine your own views and to change your opinion if you are convinced that it is wrong.
- You can only reach a unanimous verdict if you discuss your views openly and frankly, with proper regard for the opinions of others, and with a willingness to re-examine your own views.
- Remember that you are not advocates, but judges of the facts, so your sole interest is to seek the truth from the evidence.
- The question is never who wins or loses the case, because society always wins, whatever your verdict, when you return a just verdict based solely on the evidence, reason, your common sense, and these Instructions.
- You must consider all of the evidence bearing on each element before you.
- Take all the time that you feel is necessary.
- Remember that this case is important to the parties and to the fair administration of justice, so do not be in a hurry to reach a verdict just to be finished with the case.

FINAL INSTRUCTION NO. 12 – DUTY DURING DELIBERATIONS

You must follow certain rules while conducting your deliberations and returning your verdict:

- Select a foreperson to preside over your discussions and to speak for you here in court.
- Do not consider punishment in any way in deciding whether the defendant is guilty or not guilty. If the defendant is guilty, I will decide what the sentence should be.
- Communicate with me by sending me a note through a Court Security Officer (CSO). The note must be signed by one or more of you. Remember that you should not tell anyone, including me, how your votes stand. I will respond as soon as possible, either in writing or orally in open court.
- Base your verdict solely on the evidence, reason, your common sense, and these Instructions. Again, nothing I have said or done was intended to suggest what your verdict should be—that is entirely for you to decide.
- Reach your verdict without discrimination. In reaching your verdict, you must not consider the defendant's race, color, religious beliefs, national origin, or sex. You are not to return a verdict for or against the defendant unless you would return the same verdict without regard to her race, color, religious beliefs, national origin, or sex.
- Complete the Verdict Form. The foreperson must bring the signed verdict form to the courtroom when it is time to announce your verdict.
- When you have reached a verdict, the foreperson will advise the CSO that you are ready to return to the courtroom.

Good luck with your deliberations.

Dated September 19, 2018.

BY THE COURT:



KAREN E. SCHREIER
UNITED STATES DISTRICT JUDGE