

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

UNITED STATES OF AMERICA, Plaintiff, vs. MAURICE BELLAFONTA CATHEY, a/k/a Short, and CORROD LEON PHILLIPS, Defendants.	4:18-CR-40097-KES FINAL INSTRUCTIONS TO THE JURY
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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.

FINAL INSTRUCTION NO. 2 – DESCRIPTION OF CHARGES; INDICTMENT NOT EVIDENCE; PRESUMPTION OF INNOCENCE; BURDEN OF PROOF

The Second Superseding Indictment in this case charges Maurice Bellafonta Cathey with five crimes, and charges Corrod Leon Phillips with four crimes.

Counts 1 and 2 charge that defendants, Maurice Bellafonta Cathey and Corrod Leon Phillips, committed the crime of conspiracy to distribute a controlled substance.

Count 3 charges that defendant, Maurice Bellafonta Cathey, committed the crime of distribution of a controlled substance resulting in death of Layne Diaz.

Count 4 charges that defendant, Maurice Bellafonta Cathey, committed the crime of distribution of a controlled substance resulting in the serious bodily injury of Shania Hofer.

Count 5 charges that defendants, Maurice Bellafonta Cathey and Corrod Leon Phillips, committed the crime of distribution of a controlled substance resulting in the serious bodily injury of Ty Olson.

Count 6 charges that defendant, Corrod Leon Phillips, committed the crime of distribution of a controlled substance resulting in the serious bodily injury of Devlin Tommeraasen.

Each defendant has pleaded not guilty to each of these charges.

The Second Superseding Indictment is simply the document that formally charges the defendants with the crimes for which they are on trial. The Second Superseding Indictment is not evidence. At the beginning of the trial, I instructed you that you must presume the defendants to be innocent. Thus, the defendants begin the trial with a clean slate, with no evidence against them.

The presumption of innocence alone is sufficient to find each defendant not guilty of each count. This presumption can be overcome as to each charge

only if the prosecution proved during the trial, beyond a reasonable doubt, each element of that charge.

Keep in mind that you must give separate consideration to the evidence about each individual defendant. Each defendant is entitled to be treated separately, and you must return a separate verdict for each defendant. Also keep in mind that you must consider, separately, each crime charged against each individual defendant, and you must return a separate verdict for each of those crimes charged.

There is no burden upon a defendant to prove that he is innocent. Instead, the burden of proof remains on the prosecution throughout the trial. The fact that a defendant did not testify must not be considered by you in any way, or even discussed, in arriving at your verdict.

FINAL INSTRUCTION NO. 3 – CONSPIRACY TO DISTRIBUTE A CONTROLLED
SUBSTANCE

For you to find Maurice Bellafonta Cathey or Corrod Leon Phillips guilty of the offense of conspiracy to distribute a controlled substance as charged in Count 1 of the Second Superseding Indictment, the prosecution must prove the following three essential elements beyond a reasonable doubt:

One, beginning in 2017 and continuing until on or about May 23, 2018, two or more persons reached an agreement or came to an understanding to distribute heroin;

A conspiracy is an agreement of two or more persons to commit one or more crimes. It makes no difference whether any co-conspirators are defendants or named in the Second Superseding Indictment. For this element to be proved,

- Cathey or Phillips may have been, but did not have to be, one of the original conspirators
- The crime that the conspirators agreed to commit did not actually have to be committed
- The agreement did not have to be written or formal
- The agreement did not have to involve every detail of the conspiracy
- The conspirators did not have to personally benefit from the conspiracy

Here, the conspirators allegedly agreed to commit the crime of distribution of heroin. The elements of distribution of heroin are the following:

- *One*, that a person intentionally transferred heroin to another;
- *And two*, that at the time of the transfer, the person knew that what he was transferring was a controlled substance.

It is not necessary for the prosecution to prove that a defendant knew the precise nature of the controlled substance that is the subject of the charges. The prosecution must prove beyond a reasonable doubt, however, that a defendant did know that some

type of controlled substance was the subject of the agreement to distribute.

Remember that the prosecution does not have to prove that distribution of heroin actually occurred for this element of the "conspiracy" offense to be proved.

Two, that Cathey or Phillips voluntarily and intentionally joined in the agreement or understanding, either at the time it was first reached or at some later time while it was still in effect;

Cathey or Phillips must have joined in the agreement, but he may have done so at any time during its existence. Cathey or Phillips may have joined the agreement even if he agreed to play only a minor role in it.

Cathey or Phillips did not have to do any of the following to join the agreement:

- join the agreement at the same time as all the other conspirators
- know all of the details of the conspiracy, such as the names, identities, or locations of all the other members, or
- conspire with every other member of the conspiracy

On the other hand, each of the following, alone, is not enough to show that Cathey or Phillips joined the agreement:

- evidence that a person was merely present at the scene of an event
- evidence that a person merely acted in the same way as others
- evidence that a person merely associated with others
- evidence that a person was friends with or met socially with individuals involved in the conspiracy
- evidence that a person who had no knowledge of a conspiracy happened to act in a way that advanced an objective of the conspiracy

- evidence that a person merely knew of the existence of a conspiracy
- evidence that a person merely knew that an objective of the conspiracy was being considered or attempted, or
- evidence that a person merely approved of the objectives of the conspiracy

Rather, the prosecution must prove that Cathey or Phillips had some degree of knowing involvement in the agreement.

In deciding whether an alleged conspiracy existed, you may consider the acts and statements of each person alleged to be part of the agreement. In deciding whether Cathey or Phillips joined the agreement, you may consider only the acts and statements of Cathey or Phillips.

And three, that at the time Cathey or Phillips joined in the agreement or understanding, he knew the purpose of the agreement or understanding.

A person knows the purpose of the agreement if he is aware of the agreement and does not participate in it through ignorance, mistake, carelessness, negligence, or accident. It is seldom, if ever, possible to determine directly what was in a defendant's mind. Thus, a defendant's knowledge of the agreement and its purpose can be proved like anything else, from reasonable conclusions drawn from the evidence.

It is not enough that a defendant and other alleged participants in the agreement to commit the crime of distribution of heroin simply met, discussed matters of common interest, acted in similar ways, or perhaps helped one another. A defendant must have known of the existence and purpose of the agreement. Without such knowledge, a defendant cannot be guilty of conspiracy, even if his acts furthered the conspiracy.

If you determine that an agreement existed and a defendant joined the agreement, then acts and statements knowingly done or made by a member of the agreement during the existence of the agreement and in furtherance of it, may be considered by you as evidence pertaining to a defendant, even though the acts and statements were done or made in the absence of and without the knowledge of a defendant. This includes acts done or statements made before a

defendant joined the agreement, because a person who knowingly, voluntarily and intentionally joins an existing conspiracy becomes responsible for all of the conduct of the co-conspirators from the beginning of the conspiracy.

Acts and statements that are made before the conspiracy began or after it ended are admissible only against the person making them and should not be considered by you against any other defendant.

For you to find Cathey or Phillips guilty of the offense charged in Count 1 of the Second Superseding Indictment, the prosecution must prove all three of the essential elements beyond a reasonable doubt. Otherwise, you must find Cathey or Phillips not guilty of the offense charged in Count 1 of the Second Superseding Indictment.

FINAL INSTRUCTION NO. 4 – CONSPIRACY TO DISTRIBUTE A CONTROLLED
SUBSTANCE

For you to find Maurice Bellafonta Cathey or Corrod Leon Phillips guilty of the offense of conspiracy to distribute a controlled substance as charged in Count 2 of the Second Superseding Indictment, the prosecution must prove the following three essential elements beyond a reasonable doubt:

One, beginning in 2017 and continuing until on or about May 23, 2018, two or more persons reached an agreement or came to an understanding to distribute cocaine base;

What is necessary to prove this element is described for you in Final Instruction No. 3, under element number one.

Two, that Cathey or Phillips voluntarily and intentionally joined in the agreement or understanding, either at the time it was first reached or at some later time while it was still in effect;

What is necessary to prove this element is described for you in Final Instruction No. 3, under element number two.

And three, that at the time Cathey or Phillips joined in the agreement or understanding, he knew the purpose of the agreement or understanding.

What is necessary to prove this element is described for you in Final Instruction No. 3, under element number three.

For you to find Cathey or Phillips guilty of the offense charged in Count 2 of the Second Superseding Indictment, the prosecution must prove all three of the essential elements beyond a reasonable doubt. Otherwise, you must find Cathey or Phillips not guilty of the offense charged in Count 2 of the Second Superseding Indictment.

FINAL INSTRUCTION NO. 5 – DISTRIBUTION OF A CONTROLLED
SUBSTANCE RESULTING IN DEATH

For you to find Maurice Bellafonta Cathey guilty of the offense of distribution of a controlled substance resulting in death as charged in Count 3 of the Second Superseding Indictment, the prosecution must prove the following three essential elements beyond a reasonable doubt:

One, that on or about January 4, 2018, Cathey intentionally transferred heroin to Layne Diaz;

Heroin is a controlled substance.

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 that 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.

The prosecution need not prove that the defendant intentionally transferred the heroin directly to Layne Diaz, so long as the prosecution proves beyond a reasonable doubt that the heroin transferred by the defendant is the same heroin that later resulted in the death of Layne Diaz.

Two, that at the time of the transfer, Cathey knew it was heroin;

It is not necessary for the prosecution to prove that the defendant knew the precise nature of the heroin that he distributed. The prosecution must prove beyond a reasonable doubt, however, that the defendant did know that some type of controlled substance was distributed.

And three, that Layne Diaz would not have died but for the use of that same heroin transferred by Cathey.

The prosecution must prove that death resulted from the unlawfully transferred heroin, not merely from a combination of factors to which drug use merely contributed.

The law does not require the prosecution to prove that the defendant intended to cause death. Similarly, the law does not require the prosecution to prove that the defendant knew or should have known

that he was exposing Layne Diaz to a risk of death when the defendant transferred the heroin.

For you to find Cathey guilty of the offense charged in Count 3 of the Second Superseding Indictment, the prosecution must prove all three of the essential elements beyond a reasonable doubt. Otherwise, you must find Cathey not guilty of the offense charged in Count 3 of the Second Superseding Indictment.

Lesser Included Offense – Distribution of a Controlled Substance

If your verdict under these instructions is not guilty of distribution of a controlled substance resulting in death, or if, after all reasonable efforts, you are unable to reach a verdict on Count 3 of the Second Superseding Indictment, you should record that decision on the verdict form and go on to consider whether Cathey is guilty of the crime of distribution of a controlled substance. The crime of distribution of a controlled substance, a lesser included offense of the crime charged in Count 3 of the Second Superseding Indictment, has the following two essential elements:

One, that Cathey intentionally transferred heroin to Layne Diaz;

And two, that at the time of the transfer, Cathey knew that it was heroin.

For you to find Cathey guilty of the crime of distribution of a controlled substance, the prosecution must prove all of these essential elements beyond a reasonable doubt; otherwise you must find Cathey not guilty of this crime.

FINAL INSTRUCTION NO. 6 – DISTRIBUTION OF A CONTROLLED
SUBSTANCE RESULTING IN SERIOUS BODILY INJURY

For you to find Maurice Bellafonta Cathey guilty of the offense of distribution of a controlled substance resulting in serious bodily injury as charged in Count 4 of the Second Superseding Indictment, the prosecution must prove the following three essential elements beyond a reasonable doubt:

One, that on or about February 9, 2018, Cathey intentionally transferred heroin to Shania Hofer;

Heroin is a controlled substance.

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 that 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.

The prosecution need not prove that the defendant intentionally transferred the heroin directly to the victim, so long as the prosecution proves beyond a reasonable doubt that the heroin transferred by the defendant is the same heroin that later resulted in the serious bodily injury of the victim.

Two, that at the time of the transfer, Cathey knew it was heroin;

It is not necessary for the prosecution to prove that the defendant knew the precise nature of the heroin that he distributed. The prosecution must prove beyond a reasonable doubt, however, that the defendant did know that some type of controlled substance was distributed.

And three, that Shania Hofer would not have suffered serious bodily injury but for the use of that same heroin transferred by Cathey.

A "serious bodily injury" is a bodily injury which involves a substantial risk of death, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

The prosecution must prove that serious bodily injury resulted from the unlawfully transferred heroin, not merely from a combination of factors to which drugs merely contributed.

The law does not require the prosecution to prove that the defendant intended to cause serious bodily injury. Similarly, the law does not require the prosecution to prove that the defendant knew or should have known that he was exposing the victim to a risk of serious bodily injury when the defendant transferred the heroin.

For you to find Cathey guilty of the offense charged in Count 4 of the Second Superseding Indictment, the prosecution must prove all three of the essential elements beyond a reasonable doubt. Otherwise, you must find Cathey not guilty of the offense charged in Count 4 of the Second Superseding Indictment.

Lesser Included Offense – Distribution of a Controlled Substance

If your verdict under these instructions is not guilty of distribution of a controlled substance resulting in serious bodily harm, or if, after all reasonable efforts, you are unable to reach a verdict on Count 4 of the Second Superseding Indictment, you should record that decision on the verdict form and go on to consider whether Cathey is guilty of the crime of distribution of a controlled substance. The crime of distribution of a controlled substance, a lesser included offense of the crime charged in Count 4 of the Second Superseding Indictment, has the following two essential elements:

One, that Cathey intentionally transferred heroin to Shania Hofer;

And two, that at the time of the transfer, Cathey knew that it was a heroin.

For you to find Cathey guilty of the crime of distribution of a controlled substance, the prosecution must prove all of these essential elements beyond a reasonable doubt; otherwise you must find Cathey not guilty of this crime.

FINAL INSTRUCTION NO. 7 – DISTRIBUTION OF A CONTROLLED
SUBSTANCE RESULTING IN SERIOUS BODILY INJURY

For you to find Maurice Bellafonta Cathey or Corrod Leon Phillips guilty of the offense of distribution of a controlled substance resulting in serious bodily injury as charged in Count 5 of the Second Superseding Indictment, the prosecution must prove the following three essential elements beyond a reasonable doubt:

One, that on or about April 23, 2018, Cathey or Phillips intentionally transferred heroin to Ty Olson;

What is necessary to prove this element is described for you in Final Instruction No. 6, under element number one.

Two, that at the time of the transfer, Cathey or Phillips knew it was heroin;

What is necessary to prove this element is described for you in Final Instruction No. 6, under element number two.

And three, that Ty Olson would not have suffered a serious bodily injury but for the use of that same heroin transferred by Cathey or Phillips.

What is necessary to prove this element is described for you in Final Instruction No. 6, under element number three.

For you to find Cathey or Phillips guilty of the offense charged in Count 5 of the Second Superseding Indictment, the prosecution must prove all three of the essential elements beyond a reasonable doubt. Otherwise, you must find Cathey or Phillips not guilty of the offense charged in Count 5 of the Second Superseding Indictment.

Lesser Included Offense – Distribution of a Controlled Substance

If your verdict under these instructions is not guilty of distribution of a controlled substance resulting in serious bodily harm, or if, after all reasonable efforts, you are unable to reach a verdict on Count 5 of the Second Superseding Indictment, you should record that decision on the verdict form and go on to

consider whether Cathey or Phillips is guilty of the crime of distribution of a controlled substance. The crime of distribution of a controlled substance, a lesser included offense of the crime charged in Count 5 of the Second Superseding Indictment, has the following two essential elements:

One, that Cathey or Phillips intentionally transferred heroin to Ty Olson;

And two, that at the time of the transfer, Cathey or Phillips knew that it was heroin.

For you to find Cathey or Phillips guilty of the crime of distribution of a controlled substance, the prosecution must prove all of these essential elements beyond a reasonable doubt; otherwise you must find Cathey or Phillips not guilty of this crime.

FINAL INSTRUCTION NO. 8 – CONSPIRACY TO DISTRIBUTE A CONTROLLED
SUBSTANCE RESULTING IN SERIOUS BODILY INJURY

For you to find Corrod Leon Phillips guilty of the offense of distribution of a controlled substance resulting in serious bodily injury as charged in Count 6 of the Second Superseding Indictment, the prosecution must prove the following three essential elements beyond a reasonable doubt:

One, that on or about May 16, 2018, Phillips intentionally transferred heroin to Devlin Tommeraasen;

What is necessary to prove this element is described for you in Final Instruction No. 6, under element number one.

Two, that at the time of the transfer, Phillips knew it was heroin;

What is necessary to prove this element is described for you in Final Instruction No. 6, under element number two.

And three, Devlin Tommeraasen would not have suffered a serious bodily injury but for the use of that same heroin transferred by Phillips.

What is necessary to prove this element is described for you in Final Instruction No. 6, under element number three.

For you to find Phillips guilty of the offense charged in Count 6 of the Second Superseding Indictment, the prosecution must prove all three of the essential elements beyond a reasonable doubt. Otherwise, you must find Phillips not guilty of the offense charged in Count 6 of the Second Superseding Indictment.

Lesser Included Offense – Distribution of a Controlled Substance

If your verdict under these instructions is not guilty of distribution of a controlled substance resulting in serious bodily harm, or if, after all reasonable efforts, you are unable to reach a verdict on Count 6 of the Second Superseding Indictment, you should record that decision on the verdict form and go on to consider whether Phillips is guilty of the crime of distribution of a controlled substance. The crime of distribution of a controlled substance, a lesser

included offense of the crime charged in Count 6 of the Second Superseding Indictment, has the following two essential elements:

One, that Phillips intentionally transferred heroin to Devlin Tommeraasen;

And two, that at the time of the transfer, Phillips knew that it was heroin.

For you to find Phillips guilty of the crime of distribution of a controlled substance, the prosecution must prove all of these essential elements beyond a reasonable doubt; otherwise you must find Phillips not guilty of this crime.

FINAL INSTRUCTION NO. 9 – “BUT FOR” CAUSE

The prosecution must prove that serious bodily injury or death resulted from the unlawfully transferred controlled substance, not merely from a combination of factors to which the drug use contributed. This is known as “but for” causation. For example, where A shoots B, who is hit and dies, we can say that A caused B’s death, because but for A’s conduct, B would not have died. The same thing is true if a person’s act combines with other factors to produce the result, so long as the other factors alone would not have produced the result—the straw that broke the camel’s back, so to speak. Thus, if poison is administered to a man debilitated by multiple diseases, the poison is a “but for” cause of death even if the diseases played a part in his deterioration, so long as, without the effect of the poison, he would have lived.

FINAL INSTRUCTION NO. 10 – AIDING AND ABBETTING

A person may also be found guilty of distribution of a controlled substance resulting in serious bodily injury even if he personally did not do every act constituting the offense charged, if he aided and abetted the commission of distribution of a controlled substance resulting in serious bodily injury.

In order to aid^{and} abet the commission of a crime, a person must, before or at the time the crime was committed:

- (1) have known distribution of a controlled substance was being committed or was going to be committed;
- (2) have had enough advanced knowledge of the extent and character of distribution of a controlled substance that he was able to make the relevant choice to walk away from the distribution before all elements of distribution of a controlled substance were complete; and
- (3) have knowingly acted in some way for the purpose of causing or aiding the commission of distribution of a controlled substance.

For you to find the defendant guilty of distribution of a controlled substance resulting in serious bodily injury by reason of aiding and abetting, the prosecution must prove beyond a reasonable doubt that all elements of distribution of a controlled substance resulting in serious bodily injury were committed by some person or persons and that the defendant aided and abetted the commission of that crime.

FINAL INSTRUCTION NO. 11 – 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.

You have heard evidence that several witnesses were previously convicted of a crime. You may use that evidence only to help you decide whether to believe the witness and how much weight to give their testimony.

You have heard evidence that several witnesses made a plea agreement with the prosecution. Their testimony was received in evidence and may be considered by you. You may give their testimony such weight as you think it deserves. Whether or not their testimony may have been influenced by the plea agreement is for you to determine. The witnesses’ guilty pleas cannot be considered by you as any evidence of Cathey or Phillips’ guilt. The witnesses’ guilty pleas can be considered by you only for the purpose of determining how much, if at all, to rely upon the witnesses’ testimony.

You have heard evidence that Nicole Hollaar and Candace Tschetter have received a promise from the prosecution that they will not be prosecuted or that their testimony will not be used against them in a criminal case. Their testimony was received in evidence and may be considered by you. You may

give their testimony such weight as you think it deserves. Whether or not their testimony may have been influenced by the prosecution's promise is for you to determine.

You have heard testimony from witnesses who stated that they participated in the crime charged against the defendant. Their testimony was received in evidence and may be considered by you. You may give their testimony such weight as you think it deserves. Whether or not their testimony may have been influenced by their desire to please the government or to strike a good bargain with the government about their own situation is for you to determine.

You have heard evidence that witnesses hope to receive a reduced sentence on criminal charges pending against them in return for their cooperation with the government in this case. The witnesses entered into agreements with the government that provide that in return for their assistance or testimony, the government will recommend a less severe sentence that could be less than the mandatory minimum sentence for the crime with which they are charged. The witnesses are subject to a mandatory minimum sentence, that is, a sentence that the law provides must be of a certain minimum length. If the prosecutor handling these witnesses' cases believes they provided substantial assistance, that prosecutor can file in the court in which the charges are pending against the witnesses a motion to reduce their sentence below the statutory minimum. The judge has no power to reduce a sentence for substantial assistance unless the government, acting through the United States Attorney, files a such a motion. If such a motion for reduction of sentence for substantial assistance is filed by the government then it is up to the judge to decide whether to reduce the sentence at all, and if so, how much to reduce it. You may give the testimony of these witnesses such weight as you think it deserves. Whether or not testimony of a witness may have been influenced by their hope of receiving a reduced sentence is for you to decide.

If you believe that a witness has been discredited or impeached, it is your exclusive right to give that witness's testimony whatever weight, if any, 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. 12 – WITNESSES WHO HAVE PLEADED GUILTY

You have heard that several witnesses pleaded guilty to a crime that arose out of the same events for which the defendants are on trial here. You must not consider that guilty plea as any evidence of these defendants' guilt. You may consider that witness's guilty plea only for the purpose of determining how much, if at all, to rely upon his or her testimony.

FINAL INSTRUCTION NO. 13 – 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 a defendant's arrest, the charge, or the fact that he is here in court.
- This presumption remains with a defendant throughout the trial.
- This presumption is enough, alone, for you to find a defendant not guilty, unless the prosecution proves, beyond a reasonable doubt, all of the elements of an offense charged against him.

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

- This burden never, ever shifts to a defendant to prove his innocence.
- This burden means that a defendant does not have to call any witnesses, produce any evidence, cross-examine the prosecution's witnesses, or testify.
- This burden means that, if a 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 a defendant not guilty of the offense charged against him, unless the prosecution proves beyond a reasonable doubt that he has committed each and every element of the offense.

FINAL INSTRUCTION NO. 14 – 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 a 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 a 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. 15 – DEMONSTRATIVE SUMMARIES NOT
RECEIVED IN EVIDENCE

Certain charts and summaries have been received as demonstrative exhibits only and shown to you in order to help explain the facts disclosed by the books, records or other underlying evidence in the case. Those charts or summaries are used for convenience. They are not themselves evidence or proof of any facts. If they do not correctly reflect the facts shown by the evidence in the case, you should disregard these charts and summaries and determine the facts from the books, records or other underlying evidence.

FINAL INSTRUCTION NO. 16 – 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 a defendant is guilty, say so.
- If you are convinced that the prosecution has proved beyond a reasonable doubt that a 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. 17 – DUTY DURING DELIBERATIONS

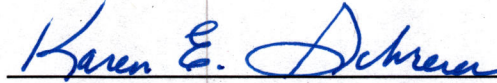
You must follow certain rules while conducting your deliberations and returning your verdict:

- 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 a defendant is guilty or not guilty. If a 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 a defendant's race, color, religious beliefs, national origin, or sex. You are not to return a verdict for or against a defendant unless you would return the same verdict without regard to his 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 November 20, 2019.

BY THE COURT:



KAREN E. SCHREIER
UNITED STATES DISTRICT JUDGE