

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
NORTHERN DIVISION

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<p>UNITED STATES OF AMERICA,  Plaintiff,  vs.  MICHAEL NATHAN CEBULLA,  Defendant.</p>	<p>CR 21-10017-CBK  JURY INSTRUCTIONS</p>
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INSTRUCTION NO. \_\_\_\_\_

Ladies and gentlemen of the jury, it is my duty now to explain the rules of law you must apply to this case.

You as jurors are the sole judges of the facts. But it is your duty to follow the law stated in these instructions, and to apply that law to the facts as you find them from the evidence before you. It would be a violation of your sworn duty to base your verdicts upon any rules of law other than the ones given you in these instructions, regardless of your personal feelings as to what the law ought to be.

You are not to single out one instruction alone as stating the law, but must consider the instructions as a whole.

INSTRUCTION NO. \_\_\_\_\_

You have been chosen and sworn as jurors to try the issues of fact presented by the allegations of the indictment and the denials made by the defendant in his pleas of “not guilty.” You are to perform this duty without bias or prejudice, because the law does not permit jurors to be governed by sympathy or public opinion. The accused and the public expect that you will carefully and impartially consider all of the evidence and will follow the law as stated by the Court, in order to reach just verdicts, regardless of the consequences to any party.

INSTRUCTION NO. \_\_\_\_\_

The indictment in this case charges the defendant with the crimes of conspiracy to commit bribery concerning programs receiving federal funds and of making a materially false statement. The defendant has pleaded not guilty to these charges.

As I told you at the beginning of the trial, an indictment is simply an accusation. It is not evidence of anything. To the contrary, the defendant is presumed to be innocent. Therefore, the defendant, even though charged, begins the trial with no evidence against him. This presumption of innocence alone is sufficient to find the defendant not guilty and can be overcome only if the government proves, beyond a reasonable doubt, each essential element of the crimes charged.

There is no burden upon the defendant to prove that he is innocent.

Keep in mind that each count charges a separate crime. You must consider each count separately, and return a separate verdict for each count.

INSTRUCTION NO. \_\_\_\_\_

A reasonable doubt is a doubt based upon reason and common sense, and not the mere possibility of innocence. A reasonable doubt is the kind of doubt that would make a reasonable person hesitate to act. Proof beyond a reasonable doubt, therefore, must be proof of such a convincing character that a reasonable person would not hesitate to rely and act upon it. However, proof beyond a reasonable doubt does not mean proof beyond all possible doubt.

INSTRUCTION NO. \_\_\_\_\_

I have mentioned the word “evidence.” The evidence in this case consists of the testimony of witnesses, and the documents and other things received as exhibits.

You may use reason and common sense to draw deductions or conclusions from facts which have been established by the evidence in the case.

Certain things are not evidence. I shall list those things again for you now:

1. Statements, arguments, questions, and comments by lawyers representing the parties in the case are not evidence.
2. Objections are not evidence. Lawyers have a right to object when they believe something is improper. You should not be influenced by the objection. If I sustained an objection to a question, you must ignore the question and must not try to guess what the answer might have been.
3. Testimony and questions that I struck from the record, or told you to disregard, are not evidence and must not be considered.
4. Anything you saw or heard about this case outside the courtroom is not evidence.

INSTRUCTION NO. \_\_\_\_\_

There are two types of evidence from which you may find the truth as to the facts of a case—direct and circumstantial evidence. Direct evidence is the testimony of one who asserts actual knowledge of a fact, such as an eyewitness; circumstantial evidence is proof of a chain of facts and circumstances indicating the guilt or innocence of the defendant. The law makes no distinction between the weight to be given to either direct or circumstantial evidence. Nor is a greater degree of certainty required of circumstantial evidence than of direct evidence. You should weigh all the evidence in the case. After weighing all the evidence, if you are not convinced of the guilt of the defendant beyond a reasonable doubt, you must find the defendant not guilty.

INSTRUCTION NO. \_\_\_\_\_

In deciding what the facts are, you may have to decide what testimony you believe and what testimony you do not believe. You may believe all of what a witness said, or only part of it, or none of it.

In deciding what testimony to believe, consider the witness's intelligence, the opportunity the witness had to have seen or heard the things testified about, the witness's memory, any motives that witness may have for testifying a certain way, the manner of the witness while testifying, whether that witness said something different at an earlier time, the general reasonableness of the testimony, and the extent to which the testimony is consistent with any evidence that you believe.

In deciding whether or not to believe a witness, keep in mind that people sometimes hear or see things differently and sometimes forget things. You need to consider therefore whether a contradiction is an innocent misrecollection or lapse of memory or an intentional falsehood, and that may depend on whether it has to do with an important fact or only a small detail.

You should judge the testimony of the defendant in the same manner as you judge the testimony of any other witness.



INSTRUCTION NO. \_\_\_\_\_

The weight of the evidence is not necessarily determined by the number of witnesses testifying. You should consider all the facts and circumstances in evidence to determine which of the witnesses are worthy of a greater credence. 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.

INSTRUCTION NO. \_\_\_\_\_

You have heard evidence that John German, Daniel White, and Kevin Trio have made plea agreements with the government. You have heard that John German and Daniel White have pled guilty to bribery, and that Kevin Trio pled guilty to making a materially false statement. 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 agreements is for you to determine.

The witness' guilty pleas cannot be considered by you as any evidence of this defendant's guilt. The witness' guilty pleas can be considered by you only for the purpose of determining how much, if at all, to rely upon the witness' testimony.

INSTRUCTION NO. \_\_\_\_\_

The crime of conspiracy as charged in Count 1 of the indictment has four essential elements, which are:

1. Beginning in or about the Spring of 2017, and continuing through on or about December 19, 2017, two or more people reached an agreement to commit the crime of bribery concerning programs receiving federal funds in the District of South Dakota;
2. The defendant voluntarily and intentionally joined in the agreement, either at the time it was first reached or at some other time while it was still in effect;
3. At the time the defendant joined in the agreement, he knew the purpose of the agreement; and
4. While the agreement was in effect, a person or persons who had joined the agreement knowingly did one or more acts for the purpose of carrying out or carrying forward the agreement.

For you to find the defendant guilty of this crime charged in Count 1 of the indictment, the government must prove all of these essential elements beyond a reasonable doubt. Otherwise, you must find the defendant not guilty of this crime.

INSTRUCTION NO. \_\_\_\_\_

Count 1 of the indictment charges a conspiracy to commit bribery concerning programs receiving federal funds. For you to find that the government has proved a conspiracy, you must unanimously find that there was an agreement to act for this purpose.

The agreement between two or more people to commit bribery concerning programs receiving federal funds does not need to be a formal agreement or be in writing. A verbal or oral understanding can be sufficient to establish an agreement.

It does not matter whether the crime of bribery concerning programs receiving federal funds was actually committed or whether the alleged participants in agreement actually succeeded in accomplishing their unlawful plan.

The agreement may last a long time or a short time. The members of an agreement do not all have to join it at the same time. You may find that someone joined the agreement even if you find that person did not know all of the details of the agreement.

If you have determined that two or more people reached an agreement to commit the crime of bribery concerning programs receiving federal funds, you must next decide whether the defendant voluntarily and intentionally joined that agreement, either at the time it was first formed or at some later time while it was still in effect.

INSTRUCTION NO. \_\_\_\_\_

A person joins an agreement to commit the crime of bribery concerning programs receiving federal funds by voluntarily and intentionally participating in the unlawful plan with the intent to further the crime of bribery concerning programs receiving federal funds. It is not necessary for you to find that the defendant knew all the details of the unlawful plan.

Evidence that a person was present at the scene of an event, or acted in the same way as others or associated with others, does not, alone, prove that the person joined a conspiracy. A person who has no knowledge of a conspiracy, but who happens to act in a way that advances the purpose of the conspiracy, does not thereby become a member. A person's mere knowledge of the existence of a conspiracy, or mere knowledge that an objective of a conspiracy was being considered or attempted, or mere approval of the purpose of a conspiracy, is not enough to prove that the person joined in a conspiracy.

The defendant must have known the purpose of the agreement at the time the defendant joined the agreement.

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 the defendant's mind. Thus, the 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 the defendant and other alleged participants in the agreement to commit the crime of bribery concerning programs receiving federal funds simply met, discussed matters of common interest, acted in similar ways, or perhaps helped one another. The defendant must have known of the existence and purpose of the agreement. Without such knowledge, the defendant cannot be guilty of conspiracy, even if his acts furthered the conspiracy.

Element four requires that at least one of the persons who joined the agreement took some act for the purpose of carrying out or carrying forward the agreement.

The defendant does not have to personally commit an act in furtherance of the agreement, know about it, or witness it. It makes no difference which of the participants in the agreement did the act. This is because a conspiracy is a kind of “partnership” so that under the law each member is an agent or partner of every other member and each member is bound by or responsible for the acts of every other member done to further their scheme.

The government contends that, while the agreement was in effect, a person or persons who had joined in the agreement knowingly did one or more of the following acts for the purpose of carrying forward the agreement:

1. In the Spring of 2017, defendant Cebulla conferred with John German about how Tatanka Contracting, LLC, could secure the contract. Defendant Cebulla and his co-conspirators discussed paying bribes or kickbacks to influence the process for receiving the entire construction project of the elderly village complex.
2. Defendant Cebulla and John German decided to pay Danny White a bribe, kickback, or both, to obtain the earthwork contract.
3. In mid-2017, defendant Cebulla and John German met with Danny White, offering Danny White money.
4. Danny White accepted defendant Cebulla’s and John German’s offer to receive money payments in exchange for the earthwork contract being awarded to Tatanka Contracting, LLC.
5. John German made cash payments to Danny White during the earthwork project.
6. The cash derived from the bank accounts of Tatanka Contracting, LLC, and CC Steel, LLC.
7. In late-November or December 2017, Kevin Trio created a document containing information about the earthwork project, including dollar figures

relating to the payments intended for Danny White. Defendant Cebulla and John German were present while this document was created.

8. Kevin Trio agreed to allocate money for John German to pay Danny White and that such a payment would ensure that Danny White or John German would not disrupt future payments to CC Steel, LLC – a subcontractor of Tatanka Contracting, LLC, and a construction company owned in part by defendant Cebulla – for CC Steel’s work on the earthwork project.
9. On or about October 4, 2018, defendant Cebulla made false statements regarding his knowledge of monies paid or agreed to be paid to the Director of the Dakota Nations Development Corporation.

It is not necessary that the government prove that more than one act was done in furtherance of the agreement. It is sufficient if the government proves one such act; but in that event, in order to return a verdict of guilty, you must all agree which act was done.

INSTRUCTION NO. \_\_\_\_\_

To help you decide whether the defendant agreed to commit the crime conspiracy to commit bribery concerning programs receiving federal funds, you should consider the elements of that underlying crime, which are:

1. Danny White was an agent of the Sisseton-Wahpeton Oyate Sioux Tribe by serving as the Director of the Dakota Nations Development Corporation;
2. The defendant corruptly gave, offered, or agreed to give money to Danny White in connection with a construction contract between the Dakota Nations Development Corporation and Tatanka Contracting;
3. The contract involved something of value of \$5,000 or more; and
4. The Sisseton-Wahpeton Oyate Sioux Tribe, and its governmental agency Dakota Nations Development Corporation, received benefits in excess of \$10,000 in the one-year periods beginning October 1, 2016, October 1, 2017, and October 1, 2018, pursuant to a federal program involving the receipt of federal funds.

You may consider these elements in determining whether the defendant agreed to commit the crime of conspiracy, keeping in mind that this count of the indictment only charges a conspiracy to commit bribery concerning programs receiving federal funds, and does not charge that bribery was committed.



INSTRUCTION NO. \_\_\_\_\_

If you determined that an agreement existed and the 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 the defendant, even though the acts and statements were done or made in the absence of and without the knowledge of the defendant. This includes acts done or statements made before the 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.

INSTRUCTION NO. \_\_\_\_\_

You may find that the defendant acted knowingly if you find beyond a reasonable doubt that the defendant believed there was a high probability that there was an alleged agreement to offer cash bribes to pay Mr. White and that he took deliberate actions to avoid learning of that fact. Knowledge may be inferred if the defendant deliberately closed his eyes to what would otherwise have been obvious to him. A willfully blind defendant is one who takes deliberate actions to avoid confirming a high probability of wrongdoing and who can almost be said to have actually known the critical facts. You may not find the defendant acted “knowingly” if you find he was merely negligent, careless or mistaken as to whether an agreement existed to offer cash bribes to pay Mr. White.

INSTRUCTION NO. \_\_\_\_\_

You will remember that certain summary charts were admitted into evidence. You may recall those summary charts and it is for you to decide how much weight, if any, you will give to them. In making that decision, you should consider all of the testimony you heard about the way in which they were prepared.

INSTRUCTION NO. \_\_\_\_\_

The crime of making a materially false statement as charged in Count 2 of the indictment has five essential elements, which are:

1. The defendant knowingly and intentionally made the statement or representation as charged in the District of South Dakota;
2. That statement or representation was false;
3. The statement or representation concerned a material fact;
4. The statement or representation was made about a matter within the jurisdiction of the United States Department of Justice; and
5. The defendant knew it was untrue when he made the statement or representation.

For you to find the defendant guilty of this crime charged in Count 2 of the indictment, the government must prove all of these essential elements beyond a reasonable doubt. Otherwise, you must find the defendant not guilty of this crime.

INSTRUCTION NO. \_\_\_\_\_

A statement is “false” if it was untrue when it was made.

A “material fact” is a fact that would naturally influence or is capable of influencing a decision of the agency. Whether a statement or representation is “material” does not depend on whether the agency was actually deceived or misled.

INSTRUCTION NO. \_\_\_\_\_

The indictment charges that offenses were committed “on or about between” certain dates. The proof need not establish with certainty the exact date or dates of the alleged offenses. It is sufficient if the evidence in the case establishes beyond a reasonable doubt that the offenses in question was committed on a date or dates reasonably near the date or dates alleged.

INSTRUCTION NO. \_\_\_\_\_

Upon retiring to the jury room, you will select one of your number to act as your foreperson. The foreperson will preside over your deliberations, and will be your spokesperson here in Court.

A verdict form has been prepared for your convenience.

You will take this form to the jury room and, when you have reached unanimous agreement as to your verdicts, you will have your foreperson fill in, date and sign the form to state the verdicts upon which you unanimously agree, and then notify the marshal that you have a verdict.

INSTRUCTION NO. \_\_\_\_\_

The verdicts must represent the considered judgment of each juror. In order to return any verdict, it is necessary that each juror agree thereto. Your verdicts must be unanimous.

It is your duty, as jurors, to consult with one another, and to deliberate with a view to reaching an agreement, if you can do so without violence to individual judgment. Each of you must decide the case for himself or herself, but do so only after an impartial consideration of the evidence in the case with the other jurors. In the course of your deliberations, do not hesitate to re-examine your own views, and change your opinion, if convinced it is erroneous. But do not surrender your honest conviction as to the weight or effect of the evidence, solely because of the opinion of the other jurors, or for the mere purpose of returning a verdict.

Remember at all times, you are not partisans. You are judges – judges of the facts. Your sole interest is to seek the truth from the evidence in the case.



INSTRUCTION NO. \_\_\_\_\_

If you have questions, you may send a note by a marshal, signed by your foreperson, or by one or more members of the jury.

You will note from the oath about to be taken by the marshal that he, as well as all other persons, are forbidden to communicate in any way or manner with any member of the jury on any subject touching the merits of the case.

Bear in mind also that you are never to reveal to any person – not even to the Court – how the jury stands, numerically or otherwise, on the question of the guilt or innocence of the accused, until after you have reached unanimous verdicts.

INSTRUCTION NO. \_\_\_\_\_

It is proper to add a final caution.

Nothing that I have said in these instructions – and nothing that I have said or done during the trial – has been said or done to suggest to you what I think your verdicts should be.

What the verdicts shall be is your exclusive duty and responsibility.

