

UNITED STATES DISTRICT COURT

DISTRICT OF SOUTH DAKOTA

CENTRAL DIVISION

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UNITED STATES OF AMERICA,

Plaintiff,

vs.

TALLY COLOMBE,  
ELNITA RANK,  
KRISTAL HAWK,  
RONDA HAWK,  
TIFFANY MONTEAU, and  
STEFEN MONTEAU,

Defendants.

3:18-CR-30013-RAL

FINAL JURY INSTRUCTIONS

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INSTRUCTION NO. 1

Members of the jury, the instructions I gave you at the beginning of the trial and during the trial remain in effect. I now give you some additional instructions. The instructions I am about to give you now are in writing and will be available to you in the jury room.

You must, of course, continue to follow the instructions I gave you earlier, as well as those I give you now. You must not single out some instructions and ignore others, because all are important.

All instructions, whenever given and whether in writing or not, must be followed.

INSTRUCTION NO. 2

It is your duty to find from the evidence what the facts are. You will then apply the law, as I give it to you, to those facts. You must follow my instructions on the law, even if you thought the law was different or should be different.

Do not allow sympathy or prejudice to influence you. The law demands of you a just verdict, unaffected by anything except the evidence, your common sense, and the law as I give it to you.

### INSTRUCTION NO. 3

I have mentioned the word “evidence.” The “evidence” in this case consists of the testimony of witnesses, the documents and other things received as exhibits, and the facts that have been stipulated—that is, formally agreed to by the parties.

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 that I struck from the record, or told you to disregard, is not evidence and must not be considered.
4. Anything you saw or heard about this case outside the courtroom is not evidence.

When you were instructed that evidence was received for a limited purpose, you must follow that instruction.

INSTRUCTION NO. 4

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

#### INSTRUCTION NO. 5

The indictment in this case charges the defendants with conspiracy to retaliate against a witness. The defendants have pleaded not guilty to this charge.

The indictment is simply the document that formally charges the defendants with the crimes for which he or she is on trial. The indictment is not evidence of anything. At the beginning of the trial, I instructed you that you must presume the defendants to be innocent. Thus, the defendants began the trial with a clean slate, with no evidence against them. The presumption of innocence alone is sufficient to find the defendants not guilty. This presumption can be overcome only if the United States proved during the trial, beyond a reasonable doubt, each element of the crime charged.

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.

There is no burden upon defendants to prove that they are innocent. Instead, the burden of proof remains on the United States throughout the trial. Accordingly, 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.

INSTRUCTION NO. 6

It is a crime for two or more people to agree to commit a crime. The crime of conspiracy, as charged in the indictment, has four elements, which are:

***One*, that from on or about September 8, 2017 and continuing through on or about September 12, 2017 two or more people reached an agreement to commit the crime of retaliating against Lahoma Simmons for assisting law enforcement on a case involving program fraud and wire fraud;**

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

***Three*, at the time the defendant joined in that agreement, he or she knew the purpose of the agreement; and**

***Four*, while that agreement was in effect, a person or persons who had joined in that agreement knowingly did one or more acts for the purpose of carrying out or carrying forward that agreement.**

You must consider the evidence and apply these elements separately to each of the defendants charged. If all of these elements have been proved beyond a reasonable doubt as to a defendant, then you must find that defendant guilty of the crime charged. Otherwise you must find that defendant not guilty of this crime.

#### INSTRUCTION NO. 7

To find the existence of a “conspiracy” in this case, the government must prove beyond a reasonable doubt that two or more persons reached an agreement or understanding to retaliate against Lahoma Simmons for assisting law enforcement.

To assist you in determining whether there was an agreement or understanding to retaliate against a witness, you should consider the elements of the offense of retaliation against a witness. The elements of retaliation against a witness for purposes of this case are: (1) a defendant knowingly caused or threatened to cause harm to Lahoma Simmons which interfered with her lawful employment and livelihood; and (2) that conduct was taken with the intent to retaliate against Lahoma Simmons for providing to a law enforcement officer truthful information relating to the commission and possible commission of a federal offense.

To find the defendant guilty of the “conspiracy” charged against him or her, you do not have to find the offense of retaliation against a witness was actually committed by the defendant or anyone else. It is the agreement to retaliate which is illegal. The agreement is the conduct which has been charged in the indictment and which must be proven beyond a reasonable doubt to establish the defendant’s guilt on the offense charged in the indictment.

The “agreement” or “understanding” need not be an express or formal agreement, or be in writing, or cover all the details of how the conspiracy was to be carried out. It is not necessary that the members have directly stated between themselves the details or purpose of the conspiracy.

Merely being present at the scene of an event, or merely acting in the same way as others, or merely associating with others, does not prove a defendant has joined in an agreement or understanding. A person who has no knowledge of a conspiracy but who happens to act in a way which advances some purpose of a conspiracy does not thereby become a member of that conspiracy. Similarly, the mere knowledge of an illegal act or association by the defendant with an individual engaged in the illegal conduct of a conspiracy is not enough to prove he or she joined the conspiracy. The defendant must know of the existence and purpose of the conspiracy. Without such knowledge, the defendant cannot be guilty of conspiracy, even if his or her acts furthered the conspiracy.

On the other hand, a person may join in an agreement or understanding without knowing all the details of the agreement or understanding, and without knowing all the other members of the conspiracy. Further, it is not necessary that a person agree to play any particular part in carrying out the agreement or understanding. A person may become a member of a conspiracy even if that person agrees to play only a minor part in the conspiracy, as long as that person has an understanding of the unlawful nature of the plan and voluntarily and intentionally joins in it.

In deciding whether the defendant voluntarily and intentionally joined in the agreement, you must consider only evidence of the defendant’s own actions and statements. You may not consider actions and statements of others, except to the extent any statement of another describes something which was said or done by the defendant.



INSTRUCTION NO. 8

The term “law enforcement officer” as used in these instructions means an officer or employee of the Federal Government, or a person authorized to act for or on behalf of the Federal Government or serving the Federal Government as an adviser or consultant authorized under law to engage in or supervise the prevention, detection, investigation, or prosecution of an offense.

INSTRUCTION NO. 9

You may consider acts knowingly done and statements knowingly made by a defendant's co-conspirators during the existence of the conspiracy and in furtherance of the conspiracy as evidence pertaining to the defendant even though the acts or 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 in the conspiracy because a person who knowingly, voluntarily and intentionally joins an existing conspiracy is responsible for all of the conduct of the co-conspirator from the beginning of the conspiracy.

INSTRUCTION NO. 10

You have heard testimony that a defendant made a statement to a federal law enforcement officer. It is for you to decide:

*First*, whether the defendant made the statement; and

*Second*, if so, how much weight you should give to it.

In making these two decisions you should consider all of the evidence, including the circumstances under which the statement may have been made.

INSTRUCTION NO. 11

Intent or knowledge may be proved like anything else. You may consider any statements made and acts done by the defendant, and all the facts and circumstances in evidence which may aid in the 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.

INSTRUCTION NO. 12

You have heard evidence that Defendant Tally Colombe pleaded guilty and was sentenced for program fraud and wire fraud in connection with embezzlement from her employer Hunkpati Investments. Such evidence was received for the limited purpose of explaining what was occurring in Tally Colombe's case in September of 2017 when the United States alleges the defendants conspired to retaliate against a witness.

You have also heard evidence that Defendant Kristal Hawk had physical contact with Florence Ludka on September 12, 2017, at the location rented by Hunkpati Investments. Such evidence was received for the limited purpose of understanding what happened on September 12, 2017.

The evidence is not to be used to prove the character of Defendant Tally Colombe or Defendant Kristal Hawk, or that either acted in conformity with such character. In other words, this evidence is not to be used by you to infer from this conduct that either Defendant Tally Colombe or Defendant Kristal Hawk was disposed to commit the crime of conspiracy to retaliate against a witness, which is the only charge that is being tried here. You may not infer from Tally Colombe's conviction for wire and program fraud that she committed conspiracy to retaliate against a witness, and whether physical contact did or did not occur between Kristal Hawk and Florence Ludka is not evidence of a conspiracy.

INSTRUCTION NO. 13

Reasonable doubt is doubt based upon reason and common sense, and not doubt based on speculation. A reasonable doubt may arise from careful and impartial consideration of all the evidence, or from a lack of evidence. Proof beyond a reasonable doubt is proof of such a convincing character that a reasonable person, after careful consideration, would not hesitate to rely and act upon that proof in life's most important decisions. Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the defendant's guilt. Proof beyond a reasonable doubt does not mean proof beyond all possible doubt.

#### INSTRUCTION NO. 14

In conducting your deliberations and returning your verdict, there are certain rules you must follow. I shall list those rules for you now.

*First*, when you go to the jury room, you must select one of your members as your foreperson. That person will preside over your discussions and speak for you here in court.

*Second*, it is your duty, as jurors, to discuss this case with one another in the jury room. You should try to reach agreement if you can do so without violence to individual judgment, because a verdict—whether guilty or not guilty—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.

*Third*, if the defendant is found guilty, the sentence to be imposed is my responsibility. You may not consider punishment in any way in deciding whether the United States has proved its case beyond a reasonable doubt.

*Fourth*, if you need to communicate with me during your deliberations, you may send a note to me through the marshal or court security officer, signed by one or more jurors. I will respond as soon as possible either in writing or orally in open court. Remember that you should not tell anyone—including me—how your votes stand numerically.

*Fifth*, during your deliberations, you must not communicate with or provide any information to anyone other than by note to me 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, Snapchat, Instagram, YouTube, or Twitter, to communicate to anyone information about this case or to conduct any research about this case until I accept your verdict.

*Sixth*, your verdict must be based solely on the evidence and on the law which I have given to you in my instructions. Nothing I have said or done is intended to suggest what your verdict should be—that is entirely for you to decide.

*Finally*, the verdict form is simply the written notice of the decision that you reach in this case. You will take this form to the jury room, and when each of you has agreed on the verdict, your foreperson will fill in the form, sign and date it, and advise the marshal or court security officer that you are ready to return to the courtroom.

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
CENTRAL DIVISION

<p>UNITED STATES OF AMERICA,  Plaintiff,  vs.  TALLY COLOMBE, ELNITA RANK, KRISTAL HAWK, RONDA HAWK, TIFFANY MONTEAU, and STEFEN MONTEAU,  Defendants.</p>	<p>3:18-CR-30013-RAL  VERDICT FORM</p>
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We, the jury, duly empaneled and sworn to try the issues in this case, find as follows:

1. We find Defendant Tally Colombe \_\_\_\_\_ (fill in either “not guilty” or “guilty”) of conspiracy to retaliate against a witness as charged in the indictment.
2. We find Defendant Elnita Rank \_\_\_\_\_ (fill in either “not guilty” or “guilty”) of conspiracy to retaliate against a witness as charged in the indictment.
3. We find Defendant Kristal Hawk \_\_\_\_\_ (fill in either “not guilty” or “guilty”) of conspiracy to retaliate against a witness as charged in the indictment.
4. We find Defendant Ronda Hawk \_\_\_\_\_ (fill in either “not guilty” or “guilty”) of conspiracy to retaliate against a witness as charged in the indictment.
5. We find Defendant Tiffany Monteau \_\_\_\_\_ (fill in either “not guilty” or “guilty”) of conspiracy to retaliate against a witness as charged in the indictment.
6. We find Defendant Stefen Monteau \_\_\_\_\_ (fill in either “not guilty” or “guilty”) of conspiracy to retaliate against a witness as charged in the indictment.

Dated November \_\_\_\_, 2018

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Foreperson