UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

UNITED STATES OF AMERICA,	*	CR 15-40109
Plaintiff,	*	JURY INSTRUCTIONS
vs.	*	
THEODORE NELSON JR., a/k/a Ted Nelson,	*	
Defendant.	*	

INSTRUCTION NO. 1

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

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. This is true even though some of those I gave you at the beginning of trial are not repeated here.

The instructions I am about to give you now are in writing and will be available to you in the jury room. I emphasize, however, that this does not mean they are more important than my earlier instructions. Again, **all** instructions, whenever given and whether in writing or not, must be followed.

Eighth Circuit Manual of Model Criminal Jury Instructions, No. 3.02 (2014).

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.

Eighth Circuit Manual of Model Criminal Jury Instructions, No. 3.02 (2014).

INSTRUCTION NO. 3

There is nothing particularly different in the way that you should consider the evidence in a trial from that in which any reasonable and careful person would treat any very important question that must be resolved by examining facts, opinions, and evidence. You are expected to use your good sense in considering and evaluating the evidence in the case for only those purposes for which it has been received and to give such evidence a reasonable and fair construction in the light of your common knowledge of the natural tendencies and inclinations of human beings.

Keep constantly in mind that it would be a violation of your sworn duty to base a verdict upon anything other than the evidence received in the case and the instructions of the Court. Remember as well that the law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence because the burden of proving guilt beyond a reasonable doubt is always assumed by the government.

O'Malley, Grenig and Lee, Federal Jury Practice and Instructions, § 12.02, (5th ed. 2000) (modified).

INSTRUCTION NO. 4

I have mentioned the word "evidence." The "evidence" consists of the testimony of witnesses, the documents and other things received as exhibits, the facts that have been stipulated – that is, formally agreed to by the parties, the facts that are judicially noticed – that is, facts which I say you may, but are not required to, accept as true, even without evidence.

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 will list those things 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 have stricken from the record, or have told you to disregard, is not evidence and must not be considered.

4. Anything you have seen or heard about this case outside the courtroom is not evidence, unless I specifically told you otherwise during the trial.

Finally, if you were instructed that some evidence was received for a limited purpose only, you must follow that instruction.

Eighth Circuit Manual of Model Criminal Jury Instructions, No. 3.03 (2014).

INSTRUCTION NO. 5

There are two types of evidence which are generally presented during a trial–direct evidence and circumstantial evidence. Direct evidence is the testimony of a person who asserts or claims to have actual knowledge of a fact, such as an eyewitness. Circumstantial evidence is proof of a chain of facts and circumstances indicating the existence of a fact. The law makes absolutely no distinction between the weight or value 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 him not guilty.

O'Malley, Grenig and Lee, Federal Jury Practice and Instructions, § 12.04, (5th ed. 2000) (modified).

INSTRUCTION NO. 6

If any reference by the Court or by counsel to matters of testimony or exhibits does not coincide with your own recollection of that evidence, it is your recollection which should control during your deliberations and not the statements of the Court or of counsel.

You are the sole judges of the evidence received in this case.

O'Malley, Grenig, and Lee, Federal Jury Practice and Instructions, § 12.07 (5th ed. 2000) (modified).

INSTRUCTION NO. 7

If you took notes during the trial, your notes should be used only as memory aids. You should not give your notes precedence over your independent recollection of the evidence. If you did not take notes, you should rely on your own independent recollection of the proceedings and you should not be influenced by the notes of other jurors. I emphasize that notes are not entitled to any greater weight than the recollection or impression of each juror as to what the testimony may have been.

United States v. Rhodes, 631 F.2d 43, 46 n.3 (5th Cir. 1980).

INSTRUCTION NO. 8

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, you may 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.

Eighth Circuit Manual of Model Criminal Jury Instructions, No. 3.04 (2014).

INSTRUCTION NO. 9

withdrawn by agreement of both parties.

Judge Lawrence L Piersol

O'Malley, Grenig and Lee, Federal Jury Practice and Instructions, § 14.16, (5th ed. 2000).

INSTRUCTION NO. 10

You have heard testimony from persons described as experts. Persons who, by knowledge, skill, training, education or experience, have become expert in some field may state their opinions on matters in that field and may also state the reasons for their opinion.

Expert testimony should be considered just like any other testimony. You may accept or reject it, and give it as much weight as you think it deserves, considering the witness's education and experience, the soundness of the reasons given for the opinion, the acceptability of the methods used, and all the other evidence in the case.

Eighth Circuit Manual of Model Criminal Jury Instructions, No. 4.10 (2014).

INSTRUCTION NO. 11

A witness may be discredited or impeached by contradictory evidence 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 you believe any witness has been impeached and thus discredited, you may give the testimony of that witness such credibility, if any, you think it deserves.

If a witness is shown knowingly to have testified falsely about any material matter, you have a right to distrust such witness's other testimony and you may reject all the testimony of that witness or give it such credibility as you may think it deserves.

An act or omission is "knowingly" done, if voluntarily and intentionally, and not because of mistake or accident or other innocent reason.

O'Malley, Grenig, & Lee, Federal Jury Practice & Instructions, § 105:04 (6th ed. 2011) (modified).

INSTRUCTION NO. 12

The Indictment in this case charges the defendant with two different crimes. Count One charges that the defendant committed the crime of unlawfully taking a bald eagle. Count Two charges that the defendant committed the crime of knowingly and willfully using a registered pesticide for a use inconsistent with its EPA approved labeling. The defendant has pleaded not guilty to each of those charges.

The Indictment is simply the document that formally charges the defendant with the crime for which he is on trial. The Indictment is not evidence. At the beginning of the trial, I instructed you that you must presume the defendant to be innocent. Thus, the defendant began the trial with a clean slate, with no evidence against him.

The presumption of innocence alone is sufficient to find the defendant not guilty and can be overcome only if the government proved during the trial, beyond a reasonable doubt, each element of a crime charged.

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

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

Eighth Circuit Manual of Model Criminal Jury Instructions, No. 3.06 (2014).

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.

Eighth Circuit Manual of Model Criminal Jury Instructions, No. 3.11 (2014).

INSTRUCTION NO. 14

The Indictment charges that the offenses alleged were committed "on or about" certain dates. Although it is necessary for the government to prove beyond a reasonable doubt that the offense was committed on a date reasonably near the dates alleged in the Indictment, it is not necessary for the government to prove that the offenses were committed precisely on the dates charged.

O'Malley, Grenig and Lee, Federal Jury Practice and Instructions, § 13.05, (5th ed. 2000).

INSTRUCTION NO. 15

The crime of Unlawful Taking of a Bald Eagle, as charged in Count I of the Indictment, has the following essential elements:

(1) That on or about the 1st day of January 2015, and the 12th day of May 2015, in Sanbom County, in the District of South Dakota, Theodore Nelson, Jr. a/k/a Ted Nelson, without being permitted to do so;

(2) Did knowingly, or with wanton disregard for the consequences of his actions, take, at any time or in any manner, a bald eagle.

Government's Proposed Jury Instruction No. 1, Doc. 56 (citing 16 U.S.C. § 668(a)).

INSTRUCTION NO. 16

The crime of Unlawful Use of Pesticide, as charged in Count II of the Indictment, has the following essential elements:

(1) That on or about the 1st day of January 2015, and the 12th day of May 2015, in Sanborn County, in the District of South Dakota, Theodore Nelson, Jr. a/k/a Ted Nelson;

(2) Did knowingly and willfully use a registered pesticide, carbamate Carbofuran, a/k/ a Furadan 4F;

(3) In a manner inconsistent with its Environmental Protection Agency approved labeling.

Government's Proposed Jury Instruction No. 2 (citing 7 U.S.C. §§ 136j (a)(2)(G) and 136*l*(b)(2)).

INSTRUCTION NO. 17

As used in these instructions, an act is done "knowingly" if the defendant is aware of the act and does not act through ignorance, mistake, or accident. You may consider evidence of the defendant's words, acts, or omissions, along with all the other evidence, in deciding whether the defendant acted knowingly. The Government is not required to prove that Defendant knew that his acts or omissions were unlawful.

Government's Proposed Jury Instruction No. 3 (citing Eighth Circuit Model Instruction 7.03) (modified); Eighth Circuit Manual of Model Criminal Jury Instructions 7.03 (2014) (modified). I did not use the Government's proposed instruction verbatim because it differed to a moderate degree from the 2014 model. In addition, the Eighth Circuit recommends not instructing on "knowingly" due to the word typically not needing to be defined. In any event, the Eighth Circuit does offer the above instruction if instructing on "knowingly" is "requested and deemed necessary."

INSTRUCTION NO. 18

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 a determination of the defendant's knowledge or 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.

Government's Proposed Jury Instruction No. 4 (citing Eighth Circuit Model Instruction 7.05); Eighth Circuit Manual of Model Criminal Jury Instructions 7.05 (2014) (modified).

INSTRUCTION NO. 19

As used in these instructions, the term "wanton disregard" means:

Reckless; A conscious knowledge of surrounding circumstances and conditions that conduct will naturally and probably result in injury.

Government's Proposed Jury Instruction No. 5 (citing 16 U.S.C. § 668; S. Rep No. 92-1159, at 5 (1972)).

INSTRUCTION NO. 20

As used in these instructions, the term, "take" means:

To pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, or molest or disturb.

Government's Proposed Jury Instruction No. 6 (citing 16 U.S.C. § 668(c)).

INSTRUCTION NO. 21

In conducting your deliberations and returning your verdict, there are certain rules you must follow. I will 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 government 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, 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, your verdict must be based solely on the evidence and on the law which I have given to you in my instructions. The verdict, whether guilty or not guilty, 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.

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 that you are ready to return to the courtroom.

Eighth Circuit Manual of Model Criminal Jury Instructions 3.12 (2014) (modified).

UNITED STATES DISTRICT COURT
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UNITED STATES OF AMERICA,	*	CR 15-40109
Plaintiff,	*	VERDICT FORM
vs.	*	
THEODORE NELSON, JR., a/k/a Ted Nelson,	*	
Defendant.	*	

Please return your verdicts by placing an "X" or "√" in the spaces provided, or as otherwise instructed below.

VERDICT ONE

We, the jury in the above entitled and numbered case, as to the crime of unlawful taking of a bald eagle, as charged in Count I of the Indictment, find the Defendant, Theodore Nelson, Jr. a/k/a Ted Nelson:

_____ NOT GUILTY

_____ GUILTY

VERDICT TWO

We, the jury in the above entitled and numbered case, as to the crime of unlawful use of pesticide, as charged in Count II of the Indictment, find the Defendant, Theodore Nelson, Jr., a/k/a Ted Nelson:

_____ NOT GUILTY

_____ GUILTY

Sign and return this form.

Dated this ____ day of July, 2016.

_____

Foreperson