

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH DAKOTA**

United States of America,	)	
	)	<b><u>FINAL INSTRUCTIONS</u></b>
Plaintiff,	)	
	)	
vs.	)	Case No. 5:23-cr-50137
	)	
Casey Pedersen,	)	
	)	
Defendant.	)	

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**GENERAL INSTRUCTIONS**

**F-1**

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

You must continue to follow the instructions I gave you earlier, as well as those I give you now. You must not single out some and ignore others, because all are important. This is true even though many of those I gave you at the beginning of trial are not repeated here.

The instructions I am about to give you as well as those I gave you earlier are in writing and will be available to you in the jury room. Again, all instructions, whenever given and whether in writing or not, must be followed.

**INDICTMENT NOT EVIDENCE**

**F-2**

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. Thus, the Defendant, even though charged, begins the trial with no evidence against him. The presumption of innocence for a finding of not guilty can be overcome only if the Government proves beyond a reasonable doubt, each essential element of the offenses charged.

**JURY MUST CONSIDER EACH COUNT SEPARATELY**

**F-3**

A separate crime, or offense, is charged in each count of the Indictment. Each alleged offense, and the evidence pertaining to it, must be considered separately. The fact that you may find the Defendant not guilty or guilty as to one of the offenses charged should not control your verdict as to any other offense charged. You must base your verdict on each count solely on the evidence presented relevant to that count.

**COUNT ONE: ESSENTIAL ELEMENTS**

**F-4**

Count One of the Indictment charges the Defendant with making a false statement. Count One is alleged to have occurred on or about February 17, 2021.

This offense has five (5) essential elements, which are:

- One The Defendant knowingly and intentionally made statements in a Second Draw Borrower Application Form for the Paycheck Protection Program indicating that he was not the owner of another business;
- Two That statement or representation was false or fraudulent;
- Three The statement or representation concerned a material fact;
- Four The statement or representation was made about a matter within the jurisdiction of the Small Business Administration; and
- Five The Defendant knew it was untrue when he made the statement or representation.

**COUNT TWO: ESSENTIAL ELEMENTS**

**F-5**

Count Two of the Indictment charges the Defendant with making a false statement. Count Two is alleged to have occurred on or about February 17, 2021.

This offense has five (5) essential elements, which are:

- One The Defendant knowingly and intentionally made statements in a Second Draw Borrower Application Form for the Paycheck Protection Program indicating that he had realized a reduction in gross receipts in excess of 25% relative to the relevant comparison time period;
- Two That statement or representation was false or fraudulent;
- Three The statement or representation concerned a material fact;
- Four The statement or representation was made about a matter within the jurisdiction of the Small Business Administration; and
- Five The Defendant knew it was untrue when he made the statement or representation.

**DEFINITIONS**

**F-6**

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

A statement or representation is “**fraudulent**” if the Defendant made it with the intent to deceive.

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.

**BURDEN OF PROOF**

**F-7**

Because the burden is upon the Government to prove the accused guilty beyond a reasonable doubt of every essential element of the offenses charged, the Defendant has the right to rely upon the failure of the Government to establish such proof. The Defendant may also rely on the evidence brought out in cross-examination of witnesses for the Government.

The law does not impose upon the Defendant the duty of producing any evidence. If, after carefully and impartially considering all the evidence, you do not feel convinced that the Defendant is guilty of the charges, you must acquit the Defendant whether or not he has offered any evidence.

**REASONABLE DOUBT DEFINED**

**F-8**

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.



**INTENT OR KNOWLEDGE**

**F-9**

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.

**DEFENDANT’S PRIOR STATEMENTS**

**F-10**

You heard testimony that the Defendant made statements during a prior hearing regarding his businesses, income, and employment. You may consider this evidence only if you unanimously find it is more likely true than not true that the Defendant made the statements. This is a lower standard than proof beyond a reasonable doubt. You decide that by considering all of the evidence relating to the alleged prior statements, then deciding what evidence is more believable about the statements.

If you find that this evidence has not been proved, you must disregard it. If you find this evidence has been proved, then you may consider it only for the limited purposes of deciding:

- whether the Defendant had the knowledge or intent necessary to commit the crime charged in the indictment;
- whether he had a motive or opportunity to commit the acts described in the indictment;
- whether the acts he is on trial for were part of a common scheme or plan; or
- whether the acts he is on trial for were not the result of an accident or mistake.

You should give the prior statements the weight and value you believe they are entitled to receive.

**INFERENCES**

**F-11**

You are to consider only the evidence in the case. In your consideration of the evidence, you are not limited to the statements of the witnesses. In other words, you are not limited solely to what you see and hear as the witnesses testify. You are permitted to draw, from facts which you find have been proven, such reasonable inferences as you feel are justified in light of experience and common sense.

**DEFENDANT'S DECISION NOT TO TESTIFY**

**F-12**

There is no burden upon the Defendant to prove that he is innocent. Instead, the burden of proof remains on the Government throughout 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 verdict.

**GENERAL CLOSING INSTRUCTIONS**

**F-13**

You will now go into the jury room and begin your deliberations. In conducting your deliberations and returning your verdict, there are certain rules which you must follow.

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 an agreement if you can, because the 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. Do not come to a decision, however, simply because other jurors think it is right, or simply to reach a verdict. Remember there will not be a transcript of this trial available to you when you retire to the jury room.

Third, during your deliberations, you must not communicate with or provide any information to anyone by any means about this case. You may not use any electronic device or media, such as the telephone, a cell phone, smart phone, iPhone,

Blackberry or computer, the internet, any internet service, any text or instant messaging service, any internet chat room, blog, or website such as Facebook, YouTube, Twitter, Instagram, or Snapchat (or any other social medial platform) to communicate to anyone any information about this case or to conduct any research about this case until I accept your verdict.

Fourth, if you find that the Defendant is 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.

Fifth, if you need to communicate with me during your deliberations, you may send a note to me through the marshal or bailiff. The note should be signed by one or more jurors. I will respond as soon as possible, either in writing or orally in open court. Do not tell me or anyone else how you stand on your vote numerically or otherwise.

Sixth, your verdict must be based solely on the evidence you heard and saw in this courtroom and on the law which I have given to you in these instructions. Nothing I have said or done is intended to suggest what I think of the evidence or what I think your verdict should be – that is entirely for you to decide. Remember, statements, arguments, questions, and comments by lawyers, or myself are not evidence.

Finally, a verdict form has been prepared for your convenience. This form is simply the written notice of the decision that you have reached in this case. The original verdict form will be provided to you in the jury room. When each of you has agreed on a verdict, your foreperson will fill out the verdict form, sign and date it, and advise the marshal or bailiff that you are ready to return to the courtroom.

You will now take this case, try it fairly and impartially between the parties, and return such a verdict as is warranted under all the evidence and these instructions.