

FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
VS.) CR. NO. 13-20007-JPM
)
KEITH GIBSON,)
)
 Defendant.)

Members of the Jury:

 It is now my duty to instruct you on the rules of law that you must follow and apply in deciding this case. When I have finished you will go to the jury room and begin your discussions -- what we call your deliberations.

 It will be your duty to decide whether the government has proved beyond a reasonable doubt the specific facts necessary to find the defendant guilty of the crimes charged in the indictment.

You must make your decision only on the basis of the testimony and other evidence presented here during the trial; and you must not be influenced in any way by either sympathy or prejudice for or against the defendant or the government.

You must also follow the law as I explain it to you whether you agree with that law or not; and you must follow all of my instructions as a whole. You may not single out, or disregard, any of the Court's instructions on the law.

The indictment or formal charge against the defendant is not evidence of guilt. Indeed, the defendant is presumed by the law to be innocent. The law does not require the defendant to prove his innocence or produce any evidence at all. The government has the burden of proving the defendant guilty beyond a reasonable doubt as to each charge in the indictment, and if it fails to do so you must find the defendant not guilty as to that charge.

While the government's burden of proof is a strict or heavy burden, it is not necessary that a defendant's guilt be proved beyond all possible doubt. It is only required that the government's proof exclude any "reasonable doubt" concerning a defendant's guilt.

A "reasonable doubt" is a real doubt, based upon reason and common sense after careful and impartial consideration of all the evidence in the case.

Proof beyond a reasonable doubt, therefore, is proof of such a convincing character that you would be willing to rely and act upon it without hesitation in the most important of your own affairs. If you are convinced that the defendant has been proved guilty beyond a reasonable doubt, say so. If you are not convinced, say so.

As stated earlier you must consider only the evidence that I have admitted in the case. The term "evidence" includes the testimony of the witnesses, the exhibits admitted in the record and any facts of which the court has taken judicial notice or as to which the parties have stipulated. Remember that anything the lawyers say is not evidence in the case. It is your own recollection and interpretation of the evidence that controls. What the lawyers say is not binding upon you.

In considering the evidence you may make deductions and reach conclusions which reason and common sense lead you to make; and you should not be concerned about whether the evidence is direct or circumstantial. "Direct evidence" is the testimony of one who asserts actual knowledge of a fact, such as an eye witness. "Circumstantial evidence" is proof of a chain of facts and circumstances indicating that the defendant is either guilty or not guilty. The law makes no distinction between direct or circumstantial evidence.

Also you should not assume from anything I may have said or done that I have any opinion concerning any of the issues before you in this case. Except for my instructions to you, you should disregard anything I may have said in arriving at your own decision concerning the facts.

If you have taken notes, please remember that your notes are not evidence. You should keep your notes to yourself. They can only be used to help refresh your personal recollection of the evidence in the case.

If you cannot recall a particular piece of evidence, you should not be overly influenced by the fact that someone else on the jury appears to have a note regarding that evidence. Remember, it is your recollection and the collective recollection of all of you upon which you should rely in deciding the facts in this case.

2.01A

Separate Consideration--Single Defendant
Charged with Multiple Crimes

(1) The defendant has been charged with four (4) crimes. The number of charges is no evidence of guilt, and this should not influence your decision in any way. It is your duty to separately consider the evidence that relates to each charge, and to return a separate verdict for each one. For each charge, you must decide whether the government has presented proof beyond a reasonable doubt that the defendant is guilty of that particular charge.

(2) Your decision on one charge, whether it is guilty or not guilty, should not influence your decision on any of the other charges.

Judicial Notice

You are instructed that the Court has taken judicial notice of the fact that Memphis, Tennessee is located in the Western District of Tennessee and that sex trafficking investigations are within the jurisdiction of the Executive Branch of the United States government.

Since you are the fact-finders in this case, you may, but are not required to, accept even this fact as conclusively established.

Now, in saying that you must consider all of the evidence, I do not mean that you must accept all of the evidence as true or accurate. You should decide whether you believe what each witness had to say, and how important that testimony was. In making that decision you may believe or disbelieve any witness, in whole or in part. Also, the number of witnesses testifying concerning any particular dispute is not controlling. You may decide that the testimony of a smaller number of witnesses concerning any fact in dispute is more believable than the testimony of a larger number of witnesses to the contrary.

In deciding whether you believe or do not believe any witness, I suggest that you ask yourself a few questions: Did the person impress you as one who was telling the truth? Did he or she have any particular reason not to tell the truth? Did he or she have a personal interest in the outcome of the case? Did the witness seem to have a good memory? Did the witness have the opportunity and ability to observe accurately the things he or she testified about? Did he or she appear to understand the questions clearly and answer them directly? Did the witness's testimony differ from the testimony of other witnesses?

You should also ask yourself whether there was evidence tending to prove that the witness testified falsely concerning some important fact; or, whether there was evidence that at some other time the witness said or did something, or failed to say or do something, which was different from the testimony he or she gave before you during the trial.

The fact that a witness has been convicted of a felony offense is another factor you may consider in deciding whether you believe that witness' testimony.

You should keep in mind, of course, that a simple mistake by a witness does not necessarily mean that the witness was not telling the truth as he or she remembers it, because people naturally tend to forget some things or remember other things inaccurately. So, if a witness has made a misstatement, you need to consider whether that misstatement was simply an innocent lapse of memory or an intentional falsehood; and that may depend on whether it has to do with an important fact or with only an unimportant detail.

7.02A
Defendant's Election Not to
Testify or Present Evidence

(1) A defendant has an absolute right not to testify or present evidence. The fact that he did not testify cannot be considered by you in any way. Do not even discuss it in your deliberations.

(2) Remember that it is up to the government to prove the defendant guilty beyond a reasonable doubt. It is not up to the defendant to prove that he is innocent.

7.05B
Impeachment of a Witness Other
Than Defendant By Prior Conviction

(1) You have heard the testimony of Falisha Edwards. You have also heard that before this trial she was convicted of a crime.

(2) This earlier conviction was brought to your attention only as one way of helping you decide how believable her testimony was. Do not use it for any other purpose. It is not evidence of anything else.

Testimony of a Witness Under Grant of
Immunity or Reduced Criminal Liability

(1) You have heard the testimony of Falisha Edwards. You have also heard that the government has promised her that the government will consider making a motion for a reduced sentence (i.e., a 5K1.1 motion) in exchange for her cooperation.

(2) It is permissible for the government to make such a promise. But you should consider such witness's testimony with more caution than the testimony of other witnesses. Consider whether his/her testimony may have been influenced by the government's promise.

(3) Do not convict the defendant based on the unsupported testimony of such a witness, standing alone, unless you believe his/her testimony beyond a reasonable doubt.

(1) You have heard the testimony of Falisha Edwards. You have also heard that she was involved in the same crime that the defendant is charged with committing. You should consider her testimony with more caution than the testimony of other witnesses.

(2) Do not convict the defendant based on the unsupported testimony of such a witness, standing alone, unless you believe his/her testimony beyond a reasonable doubt.

(3) The fact that Falisha Edwards has pleaded guilty to a crime is not evidence that the defendant is guilty, and you cannot consider her respective guilty plea against the defendant in any way.

Law Enforcement
Witnesses

You have heard the testimony of law enforcement officials. The fact that a witness may be employed by the city, county, state, or federal government as a law enforcement official does not mean that his or her testimony is necessarily deserving of more or less consideration or greater or lesser weight than that of an ordinary witness.

It is your decision, after reviewing all the evidence, whether to accept the testimony of each law enforcement witness and to give to that testimony whatever weight, if any, you find it deserves.

Evidence regarding certain events asserted to have occurred in November, 2012 has been received in this case for a limited purpose only. The specific dates of the alleged activity are November 8, 9, and 13, 2012 and relate to alleged Backpage.com access and/or postings. This evidence has been received for a limited purpose only and can be considered by you only as to Count 8 in this case. You may not consider it at all in determining Counts 1, 3, and 11. You may consider this evidence only on the issues raised by the false statement charge in Count 8. Specifically, you may consider this evidence only on the issue of Defendant's motivation and/or intent in making the statement that is attributed to him on January 11, 2013.

You may not use the evidence of other conduct to decide whether the Defendant carried out the acts involved in the crimes that are charged in Counts 1, 3, and 11 in this case. Even if you find that the Defendant committed a similar act, this is not evidence that he committed such an act in this case. You may not convict a person simply because you think or believe that he may have committed similar acts at another time. You may consider evidence of other conduct only on the issues of motivation and intent as raised by the specific charges in Count 8 in this case.

Indictment
Not Guilty Plea

I told you at the outset that this case was initiated through an indictment. An indictment is but a formal method of accusing the defendant of a crime. It includes the government's theory of the case, and we will be going over in a few minutes the substance of the indictment. The indictment is not evidence of any kind against an accused.

The defendant has pleaded not guilty to the charges contained in the indictment. This plea puts in issue each of the essential elements of the offenses as described in these instructions and imposes upon the government the burden of establishing each of these elements by proof beyond a reasonable doubt.

I will read the indictment to you once again so that you are well aware of the charge made in the indictment.

The indictment reads:

COUNT 3

47A.03

The Indictment and the Statute

Title 18, United States Code, § 1591(a)

Count 3 of the indictment charges the defendant with violating Section 1591 (a) of Title 18 of the United States Code. This section provides as follows in relevant part:

(a) Whoever knowingly-

(1) in or affecting interstate or foreign commerce ... recruits, entices, harbors, transports, provides, obtains or maintains by any means a person;

knowing, or in reckless disregard of the fact, that the person has not attained the age of 18 years and will be caused to engage in a commercial sex act, shall be [guilty of a crime].

Sex Trafficking of Children
in Violation of 18 U.S.C. § 1591 (a)

Count Three charges that the defendant recruited, enticed, harbored, transported, provided, obtained or maintained D.B. by any means, in or affecting interstate commerce, knowing or in reckless disregard of the fact that D.B. had not attained the age of 18 years and that D.B. would be caused to engage in a commercial sex act.

The essential elements of this offense, each of which the government must prove beyond a reasonable doubt, are:

- First: that the Defendant knowingly recruited, enticed, harbored, transported, provided, obtained or maintained D.B.;
- Second: that the Defendant knew or recklessly disregarded the fact that D.B. was under 18 years of age;
- Third: that the defendant knew or recklessly disregarded the fact that D.B. would be caused to engage in a commercial sex act, as that term will be defined for you; and
- Fourth: that the offense was committed in or affecting interstate commerce.

The word "knowingly" means that the Defendant was conscious and aware of his action and did not act because of ignorance, mistake or accident.

To act with "reckless disregard" means to be aware of but consciously and carelessly ignore facts and circumstances clearly indicating that D.B. was under the age of 18 and would be caused to engage in a commercial sex act.

The term "commercial sex act" means any sex act, on account of which anything of value is given to or received by any person.

You may find the Defendant guilty of Count One even if you find that D.B. consented to engage in the commercial sex act at issue.

The phrase "in or affecting interstate commerce" means that the prohibited acts had at least a minimal nexus with interstate commerce. This means that the actions had some effect upon interstate commerce.

The phrase "interstate commerce" means commerce between any combination of states, territories, and possessions of the United States, including the District of Columbia.

The term "commerce" includes, among other things, travel, trade, transportation and communication. It is not necessary for the government to prove that the defendant knew or intended that his conduct would affect commerce; it is only necessary that the

natural consequences of his conduct affected commerce in some way.

The terms recruit, entice, harbor, transport, provide, and obtain have their ordinary meanings.

The term "recruit" means to seek the services of or to enroll in support of oneself or others.

The term "entice" means to attract or lure using hope or desire.

The term "harbor" means to give or afford shelter or refuge to that person.

The term "transport" means to transfer or convey from one place to another.

The term "provide" means to supply or make available.

The term "obtain" means to gain, acquire, or attain.

47A-19

First Element--Recruiting, Enticing,
Transporting or Harboring

The first element of the offense which the government must prove beyond a reasonable doubt is that defendant knowingly transported or recruited or enticed or harbored or provided or obtained or maintained D.B. by any means.

The second element of the offense charged in Count 3 which the government must prove beyond a reasonable doubt is that D.B. was under the age of eighteen and the defendant knew or recklessly disregarded that fact.

The government may satisfy its burden of proof with respect to the defendant's awareness of the victim's age by proving any of the following beyond a reasonable doubt: (1) the defendant knew that the victim was under eighteen, (2) the defendant recklessly disregarded the fact that the victim was under eighteen, or (3) the defendant had a reasonable opportunity to observe the victim.

If the government has proved any one of these three alternatives with proof beyond a reasonable doubt, then the government has satisfied its burden under this element. If the government has failed to prove any of these alternatives with proof beyond a reasonable doubt, then the government has failed in its burden on the second element.

Third Element--Commercial Sex Act

The third element as to Count 3 which the government must prove beyond a reasonable doubt is that defendant knew or recklessly disregarded the fact that D.B. would be caused to engage in a commercial sex act.

A "commercial sex act" is any sex act on account of which anything of value is given to or received by any person.

In determining whether the Defendant knew or recklessly disregarded that D.B. would be caused to engage in a commercial sex act, it is not necessary that you find that any commercial sex act actually occurred. Rather, the United States must prove beyond a reasonable doubt that at the time of the offense, the Defendant had or knew of a plan to cause D.B. to engage in prostitution.

The fourth element as to Count 3 which the government must prove beyond a reasonable doubt is that defendant's conduct was in or affecting interstate or foreign commerce.

Interstate or foreign commerce simply means the movement of goods, services, money, communications (by internet or otherwise) or individuals between any two or more states.

To satisfy this element, the government must prove that the defendant's conduct affected interstate commerce in any way, no matter how minimal. Finally, the government is not required to prove that the defendant knew he was affecting interstate commerce.

Acts and transactions that are economic in nature and that affect the flow of money in the stream of commerce to any degree, however minimal, affect interstate commerce. The United States is not required to show that the defendant's conduct crossed state lines to show that it affected interstate commerce. Rather, if the defendant's conduct involved the use of goods that had moved across state lines or involved means or facilities of interstate

commerce, such as cellular telephones, the Internet, or hotels that house out-of-state travelers or are part of a national or international chain, you may find that the Defendant's acts affected interstate commerce.

Finally, the government is not required to prove that the defendant knew he was affecting interstate commerce.

COUNT 1

Conspiracy to Commit Sex
Trafficking of Children in
Violation of 18 U.S.C.
§§ 1591(a) and 1594(c)

Title 18, United States Code Section 1594, makes it a federal crime or offense for anyone to conspire to violate Title 18, United States Code, Section 1591. The defendant is charged in Count 1 with knowingly and unlawfully conspiring to recruit, entice, harbor, transport, provide, obtain or maintain by any means, in or affecting interstate commerce, D.B., knowing or in reckless disregard of the fact that D.B. had not attained the age of 18 years and that D.B. would be caused to engage in a commercial sex act, in violation of Title 18, United States Code, Sections 1591(a) and 1594(c).

It is a Federal crime to knowingly and willfully conspire or agree with someone to do something that, if actually carried out, would result in the crime of sex trafficking of children.

3.01A
Conspiracy to Commit
an Offense-Basic Elements

(1) Count 1 of the indictment accuses the defendant of a conspiracy to commit the crime of Sex Trafficking of Children in violation of federal law. It is a crime for two or more persons to conspire, or agree, to commit a criminal act, even if they never actually achieve their goal.

(2) A conspiracy is a kind of criminal partnership. For you to find the defendant guilty of the conspiracy charge, the government must prove each and every one of the following elements beyond a reasonable doubt:

(A) First, that two or more persons conspired, or agreed, to commit the crime of Sex Trafficking of Children.

(B) Second, that the defendant knowingly and voluntarily joined the conspiracy.

(3) You must be convinced that the government has proved each of these elements beyond a reasonable doubt in order to find the defendant guilty of the conspiracy charge.

(1) With regard to the first element--a criminal agreement--the government must prove that two or more persons conspired, or agreed, to cooperate with each other to commit the crime of Sex Trafficking of Children.

(2) This does not require proof of any formal agreement, written or spoken. Nor does this require proof that everyone involved agreed on all the details. But proof that people simply met together from time to time and talked about common interests, or engaged in similar conduct, is not enough to establish a criminal agreement. These are things that you may consider in deciding whether the government has proved an agreement. But without more they are not enough.

(3) What the government must prove is that there was a mutual understanding, either spoken or unspoken, between two or more people, to cooperate with each other to commit the crime of Sex Trafficking of Children. This is essential.

(4) An agreement can be proved indirectly, by facts and circumstances which lead to a conclusion that an agreement

existed. But it is up to the government to convince you that such facts and circumstances existed in this particular case.

Defendant's Connection to the Conspiracy

(1) If you are convinced that there was a criminal agreement, then you must decide whether the government has proved that the defendant knowingly and voluntarily joined that agreement. To convict the defendant, the government must prove that he knew the conspiracy's main purpose, and that he voluntarily joined it intending to help advance or achieve its goals.

(2) This does not require proof that a defendant knew everything about the conspiracy, or everyone else involved, or that he was a member of it from the very beginning. Nor does it require proof that a defendant played a major role in the conspiracy, or that his connection to it was substantial. A slight role or connection may be enough.

(3) But proof that a defendant simply knew about a conspiracy, or was present at times, or associated with members of the group, is not enough, even if he approved of what was happening or did not object to it. Similarly, just because a defendant may have done something that happened to help a conspiracy does not necessarily make him a conspirator. These

are all things that you may consider in deciding whether the government has proved that a defendant joined a conspiracy. But without more they are not enough.

(4) A defendant's knowledge can be proved indirectly by facts and circumstances which lead to a conclusion that he knew the conspiracy's main purpose. But it is up to the government to convince you that such facts and circumstances existed in this particular case.

3.06 Unindicted, Unnamed or Separately Tried Co-Conspirators

(1) Now, some of the people who may have been involved in these events are not on trial. This does not matter. There is no requirement that all members of a conspiracy be charged and prosecuted, or tried together in one proceeding.

3.13 Impossibility of Success

(1) One last point about conspiracy. It is no defense to a conspiracy charge that success was impossible because of circumstances that the defendant did not know about. This means that you may find the defendant guilty of conspiracy even if it was impossible for them to successfully complete the crime that they agreed to commit.

COUNTS 8 AND 11

18 U.S.C. § 1001

Counts 8 and 11 of the indictment charges the defendant with knowingly and willingly making a false statement or representation to the Federal Bureau of Investigation.

In this case, the government contends that the evidence shows that the defendant made a false, fictitious, and fraudulent material statement or representation to the Federal Bureau of Investigation. Specifically, the government asserts in Count 8 that the defendant falsely stated "that his laptop was opened to Backpage.com because he had been masturbating to the website," when in fact this was a materially false statement in the context of an investigation by the Federal Bureau of Investigation. Specifically, the government asserts in Count 11 that the defendant falsely stated "that he did not help anyone change 'Brandi's' ad on Backpage.com," when in fact this was a materially false statement in the context of an investigation by the Federal Bureau of Investigation.

The relevant statute on this subject is section 1001(a) of Title 18 of the United States Code. It provides:

Whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully makes any materially false, fictitious, or fraudulent statements or representation shall [be guilty of a crime].

The purpose of section 1001 is to protect the authorized functions of the various governmental departments from any type of misleading or deceptive practice and from the adverse consequences which might result from such deceptive practices.

To establish a violation of section 1001, it is necessary for the government to prove certain essential elements - which I will shortly describe for you - beyond a reasonable doubt. However, I want to point out now that it is not necessary for the government to prove that the government agency was, in fact, misled as a result of the defendant's action. It does not matter that the agency was not misled, or even that it knew of the misleading or deceptive act, should you find that the act occurred. These circumstances would not excuse or justify a concealment undertaken, or a false, fictitious or fraudulent statement made, or a false writing or document submitted, willfully and knowingly about a matter within the jurisdiction of a department or agency of the United States.

In order to prove the defendant guilty of the crime charged in Counts 8 and 11, the government must establish beyond a reasonable doubt as to the count you are considering that:

First, on or about the date specified, the defendant made a statement or representation;

Second, that this statement or representation was material;

Third, the statement or representation was false, fictitious or fraudulent;

Fourth, the false, fictitious or fraudulent statement was made knowingly and willfully; and

Fifth, the statement or representation was made in a matter within the jurisdiction of the government of the United States.

First Element-Statement
or Representation (36-10)

The first element that the government must prove beyond a reasonable doubt is that the defendant made a statement or representation. In this regard, the government need not prove that the defendant physically made or otherwise personally prepared the statement in question. It is sufficient if the defendant caused the statement asserted by the government to have been made. Under this statute, there is no distinction between written or oral statements.

The second element the government must prove beyond a reasonable doubt is that the defendant's statement or representation was material.

A fact is material if it was capable of influencing the government's decisions or activities. However, proof of actual reliance on the statement by the government is not required.

In other words, if the statement is capable of influencing a reasonable decision maker if it is believed and acted upon, the statement is material even if it does not actually influence an investigation of the Federal Bureau of Investigation. Moreover, a false statement can be material even if the agent to whom the statement is made knows the statement is false.

Third Element-False,
Fictitious or Fraudulent Statement
(36-12)

The third element that the government must prove beyond a reasonable doubt is that the statement or representation was false, fictitious or fraudulent. A statement or representation is "false" or "fictitious" if it was untrue when made, and known at the time to be untrue by the person making it or causing it to be made. A statement or representation is "fraudulent" if it was untrue when made and was made or caused to be made with the intent to deceive the government agency to which it was submitted.

Fourth Element--
Knowing and Willful Conduct
(36-13)

The fourth element which the government must prove beyond a reasonable doubt is that the defendant acted knowingly and willfully.

An act is done knowingly if it is done purposely and voluntarily, as opposed to mistakenly or accidentally.

An act is done willfully if it is done with an intention to do something the law forbids, that is, with a bad purpose to disobey the law.

Fifth Element--Matter Within
the Jurisdiction of the
United States Government (36-14)

As I have told you, the fifth element with respect to both Count 8 and Count 11 is that the statement be made with regard to a matter within the jurisdiction of the government of the United States. I charge you that the Federal Bureau of Investigation is a department or agency of the United States government.

There is no requirement that the statement or representation be actually directed to or given to a person at the Federal Bureau of Investigation. All that is necessary is that you find that it was contemplated that the statement was to be utilized in a matter which was within the jurisdiction of the government of the United States. To be within the jurisdiction of a department or agency of the United States government means that the statement must concern an authorized function of that department or agency.

In this regard, it is not necessary for the government to prove that the defendant had actual knowledge that the statement or representation was to be utilized in a matter which was within the jurisdiction of the government of the United States. It is sufficient to satisfy this element if you find that the false

statement/representation was made with regard to a matter within the jurisdiction of the government of the United States.

If you are convinced that the government has proved all of the elements under either false statement charge, either Count 8 or Count 11, and you return a guilty verdict on that charge, you must then consider whether the matter under investigation related to a violation of Title 18, United States Code, Section 1591, that is, a violation of the federal child sex trafficking law. If you unanimously find beyond a reasonable doubt that the matter under investigation related to a violation of Title 18, United States Code, Section 1591, mark the verdict sheet "Yes" as to that question on the verdict form. If you unanimously find beyond a reasonable doubt that the matter under investigation did not relate to a violation of Title 18, United States Code, Section 1591, mark the verdict sheet "No" as to that question on the verdict form.

Next, I want to explain something about proving a defendant's state of mind.

Ordinarily, there is no way that a defendant's state of mind can be proved directly, because no one can read another person's mind and tell what that person is thinking.

But, a defendant's state of mind can be proved indirectly from the surrounding circumstances. This includes things like what the defendant said, what the defendant did, how the defendant acted, and any other facts or circumstances in evidence that show what was in the defendant's mind.

You may also consider the natural and probable results of any acts that the defendant knowingly did or did not do, and whether it is reasonable to conclude that the defendant intended those results. This, of course, is all for you to decide.

(1) Next, I want to say a word about the dates mentioned in the indictment.

(2) Counts 1, 3, 8, and 11 in the indictment allege that a crime happened on or about the date or dates as set out in each respective count. The government does not have to prove that the crime happened on the exact date or dates set out in the count you are considering. But the government must prove that the crime in the count you are considering happened reasonably close to the date or dates.

The word "knowingly," as that term is used from time to time in these instructions, means that the act was done voluntarily and intentionally and not because of mistake or accident.

Summary

If you find as to the count you are considering that the government has proved beyond a reasonable doubt each of the elements of the offense as set out under these instructions, then you must return a verdict of guilty as to that count. If you find as to the count you are considering that the government has failed to prove beyond a reasonable doubt any of the elements of the offense as set out in these instructions, then, you must return a verdict of not guilty as to the count you are considering.

I caution you, members of the jury, that you are here to determine from the evidence in this case whether the defendant is guilty or not guilty of the crimes set out in the indictment. The defendant is on trial only for the specific offenses alleged in the indictment.

Also, the question of punishment should never be considered by the jury in any way in deciding the case. If the defendant is convicted the matter of punishment is for the court to determine.

You are here to determine the guilt or innocence of the accused defendant from the evidence in this case. You are not called upon to return a verdict as to the guilt or innocence of any other person or persons. You must determine whether or not the evidence in the case convinces you beyond a reasonable doubt of the guilt of the accused without regard to any belief you may have about guilt or innocence of any other person or persons.

Any verdict you reach in the jury room, whether guilty or not guilty, must be unanimous. In other words, to return a verdict you must all agree. Your deliberations will be secret; you will never have to explain your verdict to anyone.

It is your duty as jurors to discuss the case with one another in an effort to reach agreement if you can do so. Each of you must decide the case for yourself, but only after full consideration of the evidence with the other members of the jury. While you are discussing the case do not hesitate to re-examine your own opinion and change your mind if you become convinced that you were wrong. But do not give up your honest beliefs solely because the others think differently or merely to get the case over with.

Remember, that in a very real way you are judges -- judges of the facts.

When you go to the jury room you should first select one of your members to act as your presiding juror. The presiding juror will preside over your deliberations and will speak for you here in court.

A form of verdict has been prepared for your convenience. The verdict form will be placed in a folder and handed to you by the Court Security Officer. At any time that you are not deliberating (i.e., when at lunch or during a break in deliberations), the folder and verdict form should be delivered to the Court Security Officer who will deliver it to the courtroom Deputy Clerk for safekeeping.

[EXPLAIN VERDICT]

You will take the verdict form to the jury room and when you have reached unanimous agreement you will have your presiding juror fill in the verdict form, date and sign it, and then return to the courtroom.

If you should desire to communicate with me at any time, please write down your message or question and pass the note to the Court Security Officer who will bring it to my attention. I will then respond as promptly as possible after conferring with counsel, either in writing or by having you returned to the

courtroom so that I can address you orally. Please understand that I may only answer questions about the law and I cannot answer questions about the evidence. I caution you, however, with regard to any message or question you might send, that you should not tell me your numerical division at the time.

If you feel a need to see the exhibits which are not being sent to you for further examination, advise the Court Security Officer and I will take up your request at that time.

[ANY JURY ALTERNATES NOT ALREADY EXCUSED,
SHOULD BE EXCUSED AT THIS TIME].

You may now retire to begin your deliberations.