

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

UNITED STATES OF AMERICA     )  
  )  
  )     No. 08 CR 846  
  )     Judge Joan H. Lefkow  
  )  
  )  
JON BURGE                            )

**GOVERNMENT’S PROPOSED  
JURY INSTRUCTIONS AND VERDICT FORM**

The UNITED STATES OF AMERICA, by its attorney, PATRICK J. FITZGERALD,  
United States Attorney for the Northern District of Illinois, respectfully submits the following  
set of proposed jury instructions and verdict form.

Respectfully submitted,

PATRICK J. FITZGERALD  
United States Attorney

By:   s/ April M. Perry    
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Members of the jury, you have seen and heard all the evidence and the arguments of the attorneys. Now I will instruct you on the law.

You have two duties as a jury. Your first duty is to decide the facts from the evidence in the case. This is your job, and yours alone.

Your second duty is to apply the law that I give you to the facts. You must follow these instructions, even if you disagree with them. Each of the instructions is important, and you must follow all of them.

Perform these duties fairly and impartially. Do not allow sympathy, prejudice, fear, or public opinion to influence you. You should not be influenced by any person's race, color, religion, national ancestry, or sex.

Nothing I say to you now, and nothing I said or did during the trial, is meant to indicate any opinion on my part about what the facts are or about what your verdict should be.

GOVERNMENT INSTRUCTION NO. 1

Seventh Circuit Committee (1999) 1.01

The evidence consists of the testimony of the witnesses, the exhibits admitted in evidence and stipulations.

A stipulation is an agreement between both sides that certain facts are true or that a person would have given certain testimony.

GOVERNMENT INSTRUCTION NO. 2

Seventh Circuit Committee (1999) 1.02

You are to decide whether the testimony of each of the witnesses is truthful and accurate, in part, in whole, or not at all, as well as what weight, if any, you give to the testimony of each witness.

In evaluating the testimony of any witness, you may consider, among other things:

- the witness's intelligence;
- the ability and opportunity the witness had to see, hear, or know the things that the witness testified about;
- the witness's memory;
- any interest, bias, or prejudice the witness may have;
- the manner of the witness while testifying; and
- the reasonableness of the witness's testimony in light of all the evidence in the case.

You should judge the defendant's testimony in the same way that you judge the testimony of any other witness.

GOVERNMENT INSTRUCTION NO. 3A

Seventh Circuit Committee (1999) 1.03 (Defendant testifying)

You are to decide whether the testimony of each of the witnesses is truthful and accurate, in part, in whole, or not at all, as well as what weight, if any, you give to the testimony of each witness.

In evaluating the testimony of any witness, you may consider, among other things:

- the witness's intelligence;
- the ability and opportunity the witness had to see, hear, or know the things that the witness testified about;
- the witness's memory;
- any interest, bias, or prejudice the witness may have;
- the manner of the witness while testifying; and
- the reasonableness of the witness's testimony in light of all the evidence in the case.

GOVERNMENT INSTRUCTION NO. 3B

Seventh Circuit Committee (1999) 1.03 (Defendant not testifying)

You should use common sense in weighing the evidence and consider the evidence in light of your own observations in life.

In our lives, we often look at one fact and conclude from it that another fact exists. In law we call this an “inference.” A jury is allowed to make reasonable inferences. Any inferences you make must be reasonable and must be based on the evidence in the case.

GOVERNMENT INSTRUCTION NO. 4

Seventh Circuit Committee (1999) 1.04

Some of you have heard the phrases “circumstantial evidence” and “direct evidence.” Direct evidence is the testimony of someone who claims to have personal knowledge of the commission of the crime which has been charged, such as an eye witness. Circumstantial evidence is the proof of a series of facts which tend to show whether the defendant is guilty or not guilty. The law makes no distinction between the weight to be given either direct or circumstantial evidence. You should decide how much weight to give to any evidence. All the evidence in the case, including circumstantial evidence, should be considered by you in reaching your verdict.

GOVERNMENT INSTRUCTION NO. 5

Seventh Circuit Committee (1999) 1.05

Certain things are not evidence. I will list them for you:

First, testimony that I struck from the record, or that I told you to disregard, is not evidence and must not be considered.

Second, anything that you may have seen or heard outside the courtroom is not evidence and must be entirely disregarded. This includes any press, radio, or television reports you may have seen or heard. Such reports are not evidence and your verdict must not be influenced in any way by such publicity.

Third, questions and objections by the lawyers are not evidence. Attorneys have a duty to object when they believe a question is improper. You should not be influenced by any objection or by my ruling on it.

Fourth, the lawyers' statements to you are not evidence. The purpose of these statements is to discuss the issues and the evidence. If the evidence as you remember it differs from what the lawyers said, your memory is what counts.

GOVERNMENT INSTRUCTION NO. 6

Seventh Circuit Committee (1999) 1.06

It is proper for an attorney to interview any witness in preparation for trial.

GOVERNMENT INSTRUCTION NO. 7

Seventh Circuit Committee (1999) 1.07

The defendant is presumed to be innocent of each of the charges. This presumption continues during every stage of the trial and your deliberations on the verdict. It is not overcome unless from all the evidence in the case you are convinced beyond a reasonable doubt that the defendant is guilty as charged. The government has the burden of proving the guilt of the defendant beyond a reasonable doubt.

This burden of proof stays with the government throughout the case. The defendant is never required to prove his innocence or to produce any evidence at all.

GOVERNMENT INSTRUCTION NO. 8

Seventh Circuit Committee (1999) 2.03

The defendant has the absolute right not to testify. The fact that the defendant did not testify should not be considered by you in any way in arriving at your verdict.

GOVERNMENT INSTRUCTION NO. 9

Seventh Circuit Committee (1999) 3.01 (Defendant Not Testifying)

You have heard witnesses give opinions about matters requiring special knowledge or skill. You should judge this testimony in the same way that you judge the testimony of any other witness. The fact that such a person has given an opinion does not mean that you are required to accept it. Give the testimony whatever weight you think it deserves, considering the reasons given for the opinion, the witness's qualifications, and all of the other evidence in the case.

GOVERNMENT INSTRUCTION NO. 10

Seventh Circuit Committee (1999) 3.07

You have heard testimony of an identification of a person. Identification testimony is an expression of belief or impression by the witness. You should consider whether, or to what extent, the witness had the ability and opportunity to observe the person at the time of the offense and to make a reliable identification later. You should also consider the circumstances under which the witness later made the identification.

The government has the burden of proving beyond a reasonable doubt that the particular defendant you are considering was the person who committed the crime charged.

GOVERNMENT INSTRUCTION NO. 11

Seventh Circuit Committee (1999) 3.08

You have heard evidence that [insert name(s)] has been convicted of a crime. You may consider this evidence only in deciding whether [insert name(s)]'s testimony is truthful in whole, in part, or not at all. You may not consider this evidence for any other purpose.

GOVERNMENT INSTRUCTION NO. 12

Seventh Circuit Committee (1999) 3.11

You have heard testimony from [insert name(s)] who received immunity; that is, a promise from the government that any testimony or other information he provided would not be used against him in a criminal case.

You may give his testimony such weight as you feel it deserves, keeping in mind that it must be considered with caution and great care.

GOVERNMENT INSTRUCTION NO. 13

Seventh Circuit Committee (1999) 3.13

You may find the testimony of one witness or a few witnesses more persuasive than the testimony of a larger number. You need not accept the testimony of the larger number of witnesses.

GOVERNMENT INSTRUCTION NO. 14

Seventh Circuit Committee (1999) 1.09

You should not speculate why any other person whose name you may have heard during the trial is not currently on trial before you.

GOVERNMENT INSTRUCTION NO. 15

*United States v Young*, 20 F.3d 758, 765 (7th Cir. 1994)

The indictment in this case is the formal method of accusing the defendant of offenses and placing the defendant on trial. It is not evidence against the defendant and does not create any inference of guilt.

Count One and Count Three of the indictment charge the defendant with the crime of corruptly obstructing, influencing, and impeding an official proceeding. Count Two of the indictment charges the defendant with the crime of perjury. The defendant has pleaded not guilty to the charges.

GOVERNMENT INSTRUCTION NO. 16

Seventh Circuit Committee (1999) 2.01

To sustain the charge of obstruction as alleged in Counts One and Three, the government must prove the following propositions:

First, the defendant either obstructed, influenced, or impeded an official proceeding, or that he attempted to do so; and

Second, that the defendant's acts were done corruptly, that is, with the purpose of wrongfully impeding the due administration of justice.

If you find from your consideration of all the evidence that each of these propositions has been proved beyond a reasonable doubt as to a particular Count, then you should find the defendant guilty of that Count.

If, on the other hand, you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt as to a particular Count, then you should find the defendant not guilty of that Count.

GOVERNMENT INSTRUCTION NO. 17

18 U.S.C. § 1512(c)(2)

Seventh Circuit Committee (1999) 18 U.S.C. § 1503 (pg. 270) (modified)

To “attempt” an offense means that the defendant knowingly took a substantial step toward the commission of the offense with the intent to commit that offense.

GOVERNMENT INSTRUCTION NO. 18

Seventh Circuit Committee (1999) 4.07

I instruct you that *Hobley v. Jon Burge, et. al.*, case number 03 C 3678, a civil lawsuit in federal court, is an “official proceeding” for purposes of Count One and Count Three.

Count One contains multiple alleged false statements made by defendant. To find the defendant guilty of this count, the government must prove beyond a reasonable doubt that at least one of the alleged false statements contained in Count One was made. Your decision that a particular alleged false statement was made must be unanimous.

GOVERNMENT INSTRUCTION NO. 20

Seventh Circuit Committee 4.03 (1999) (modified)

To sustain the charge of perjury as charged in Count Two, the government must prove the following propositions:

First, the defendant testified under oath in his answers to Plaintiff's Second Set of Interrogatories in *Hobley v. Jon Burge, et. al.*, case number 03 C 3678, that he had no knowledge of any other examples of physical abuse and/or torture by Chicago Police Officers at Area 2;

Second, the written testimony so given was false;

Third, at the time he testified, the defendant knew such testimony was false;

Fourth, the defendant gave such testimony willfully;

Fifth, the false testimony was material.

If you find from your consideration of all the evidence that each of these propositions has been proved beyond a reasonable doubt, then you should find the defendant guilty.

If, on the other hand, you find from your consideration of all the evidence that any of these propositions has not been proved beyond a reasonable doubt, then you should find the defendant not guilty.

#### GOVERNMENT INSTRUCTION NO. 21

Manual of Model Criminal Jury Instructions for the District Courts of the Eighth Circuit (2007) (modified)

18 U.S.C. § 1621

An act is done “willfully” if it is done voluntarily and intentionally, and with the intent to do something the law forbids; that is to say with a purpose either to disobey or disregard the law.

GOVERNMENT INSTRUCTION NO. 22

Seventh Circuit Committee (1999) at 68

United States v. Patrick, 542 F.2d 381 (7th Cir. 1976)

A statement is material if it had the effect of impeding, interfering with or influencing the court or jury in the matter it was considering, or had the potential or capability of doing so. It is not necessary that the statement actually have that effect, so long as it had the potential or capability of doing so.

GOVERNMENT INSTRUCTION NO. 23

Seventh Circuit Committee (1999) at 277

In determining whether an answer to a question is false, you should consider the sequence of questions in which the question and answer occurred as an aid to understanding the defendant's intent when making the declaration.

GOVERNMENT INSTRUCTION NO. 24

Seventh Circuit Committee (1999) at 279

When the word “knowingly” or the phrase “the defendant knew” is used in these instructions, it means that the defendant realized what he was doing and was aware of the nature of his conduct, and did not act through ignorance, mistake, or accident. Knowledge may be proved by a defendant’s conduct, and by all the facts and circumstances surrounding the case.

GOVERNMENT INSTRUCTION NO. 25

Seventh Circuit Committee (1999) 4.06

Any person who knowingly aids, counsels or induces the commission of an offense may be found guilty of that offense. That person must knowingly associate with the criminal activity, participate in the activity, and try to make it succeed.

If a defendant knowingly caused the acts of another, the defendant is responsible for those acts as though he personally committed them.

GOVERNMENT INSTRUCTION NO. 26

Seventh Circuit Committee (1999) 5.06

It is not necessary that all of the acts charged in the indictment be proved, so long as the government has proven the elements of each offense as I have described them to you beyond a reasonable doubt.

GOVERNMENT INSTRUCTION NO. 27

Seventh Circuit Committee (1999) 5.08 (modified)

*United States v. Cooper*, 01 CR 1078 (Manning, J.)

*United States v. Parra*, 03 CR 72 (Zagel, J.)

The indictment charges that the offenses were committed “on or about” certain dates. The government must prove that the offenses happened reasonably close to those dates but is not required to prove that the alleged offenses happened on those exact dates.

GOVERNMENT INSTRUCTION NO. 28

Seventh Circuit Committee (1999) 4.04

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

A form of verdict has been prepared for you.

[Form of verdict read.]

Take this form to the jury room, and when you have reached unanimous agreement on the verdict, your foreperson will fill in and date the form, and each of you will sign it.

GOVERNMENT INSTRUCTION NO. 29

Seventh Circuit Committee (1999) 7.01

If you find the defendant guilty, it will then be my job to decide what punishment should be imposed. In considering the evidence and arguments that have been given during the trial, you should not guess about the punishment. The issue of punishment should not enter into your consideration or discussions at any time.

GOVERNMENT INSTRUCTION NO. 30

*United States v. Saurez*, 98 CR 614 (Castillo, J.)

*United States v. Dawson et al.*, 92 CR 1084 (Kocoras, J.) (modified)

*United States v. Trevino*, 90 CR 799 (Aspen, J.)

Each count of the indictment charges the defendant with having committed a separate offense.

Each count and the evidence relating to it should be considered separately, and a separate verdict should be returned as to each count. Your verdict of guilty or not guilty of an offense charged in one count should not control your decision as to any other count.

GOVERNMENT INSTRUCTION NO. 31

Seventh Circuit Committee (1999) 7.03

I do not anticipate that you will need to communicate with me. If you do, however, the only proper way is in writing, signed by the foreperson, or if he or she is unwilling to do so, by some other juror, and given to the marshal.

GOVERNMENT INSTRUCTION NO. 32

Seventh Circuit Committee (1999) 7.05

The verdict must represent the considered judgment of each juror. Your verdict, whether it be guilty or not guilty, must be unanimous.

You should make every reasonable effort to reach a verdict. In doing so, you should consult with one another, express your own views, and listen to the opinions of your fellow jurors. Discuss your differences with an open mind. Do not hesitate to re-examine your own views and change your opinion if you come to believe it is wrong. But you should not surrender your honest beliefs about the weight or effect of the evidence solely because of the opinions of your fellow jurors or for the purpose of returning a unanimous verdict.

The twelve of you should give fair and equal consideration to all the evidence and deliberate with the goal of reaching an agreement which is consistent with the individual judgment of each juror.

You are impartial judges of the facts. Your sole interest is to determine whether the government has proved its case beyond a reasonable doubt.

GOVERNMENT INSTRUCTION NO. 33

Seventh Circuit Committee (1999) 7.06



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FOREPERSON

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DATE