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U.S. DISTRICT COURT
DISTRICT OF NEBRASKA
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OFFICE OF THE CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,

Plaintiff,

v.

LEONARD HATTEN, JR.,

Defendant.

8:20CR36

JURY INSTRUCTIONS

INSTRUCTION NO. 1
A. INTRODUCTION

Ladies and gentlemen: I will take a few moments to give you some instructions about this case and about your duties as jurors. At the end of the trial, I will give you more instructions. I may also give you instructions during the trial. All instructions—those I give you now and those I give you later whether they are in writing or given to you orally—are equally important and you must follow them all.

B. SERVING AS A JUROR ON A CRIMINAL CASE

This is a criminal case, brought against the defendant by the United States government. Defendant Leonard Hatten is charged with one count of conspiring to interfere with commerce by robbery, two counts of interfering with commerce by robbery, and two counts of using or carrying a firearm during and in relation to a crime of violence. Those charges are set forth in what is called a Second Superseding Indictment, which I will ask the government attorney to summarize for you now. You should understand that an indictment is simply an accusation. It is not evidence of anything. The defendant has pleaded not guilty and is presumed to be innocent unless and until proved guilty beyond a reasonable doubt.

C. TESTIMONY AND EVIDENCE

It will be your duty to decide from the evidence whether the defendant is guilty or not guilty of the crimes charged. From the evidence, you will decide what the facts are. You are entitled to consider the evidence in light of your own observations and experiences in life. You may use reason and common sense to draw deductions or conclusions from facts which have been established by the evidence. You will then apply those facts to the law which I give you in these and in my other instructions, and in that way reach your verdict. You are the sole judges of the facts, but you must follow my instructions, whether you agree with them or not. You have taken an oath to do so.

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.

You should not take anything I may say or do during the trial as indicating what I think of the evidence or what I think your verdict should be.

Finally, please remember that only this defendant, not anyone else, is on trial here, and that he is on trial only for the crimes charged, not for anything else.

D. WHAT IS EVIDENCE?

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

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 sustain 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 strike from the record, or tell you to disregard, is not evidence and must not be considered.

4. Anything you see or hear about this case outside the courtroom is not evidence unless I specifically tell you otherwise during the trial.

Furthermore, a particular item of evidence is sometimes received for a limited purpose only. That is, it can be used by you only for one particular purpose, and not for any other purpose. I will tell you when that occurs and instruct you on the purposes for which the item can and cannot be used.

Finally, some of you may have heard the terms "direct evidence" and "circumstantial evidence." You are instructed that you should not be concerned with those terms. The law makes no distinction between direct and circumstantial evidence. You should give all evidence the weight and value you believe it is entitled to receive.

E. CREDIBILITY OF WITNESSES

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 other evidence that you believe.

F. NO TRANSCRIPT IS AVAILABLE BUT NOTE TAKING IS ALLOWED

At the end of the trial, you must make your decision based on what you recall of the evidence. You will not have a written transcript to consult. You must pay close attention to the testimony as it is given.

If you wish, however, you may take notes to help you remember what witnesses said. My Courtroom Deputy will provide each of you with a pad of paper and a pen or pencil.

If you do take notes, please keep them to yourself until you and your fellow jurors go to the jury room to decide the case. And do not let note-taking distract you so that you do not hear other answers by the witness. Remember, it is your own individual responsibility to listen carefully to the evidence.

At each recess, leave your notes in the jury room. When you leave at night, they will be secured and will not be read by anyone.

G. QUESTIONS BY JURORS

I do not allow jurors to ask or present written questions to any witnesses. In other words, I do not allow jurors to question witnesses either directly or indirectly.

H. BENCH CONFERENCES AND RECESSES

During the trial it may be necessary for me to talk with the lawyers out of the hearing of the jury, either by having a bench conference here while the jury is present in the courtroom, or by calling a recess. Please understand that while you are waiting, we are working. The purpose of these conferences is to decide how certain evidence is to be treated under the rules of evidence, and to avoid confusion and error. We will, of course, do what we can to keep the number and length of these conferences to a minimum.

I. CONDUCT OF THE JURY

To ensure fairness, you as jurors must obey the following rules:

First, do not talk or communicate among yourselves about this case, or about anyone involved with it, until the end of the case when you go to the jury room to decide on your verdict.

Second, do not talk with anyone else about this case, or about anyone involved with it, until the trial has ended, and you have been discharged as jurors. You must leave your cell phone, smart phone, iPhone, tablet computer, or any other wireless communication

device in the jury room during the trial and may only use them during breaks. You will have to turn those devices "off" in the jury room during your deliberations.

Third, when you are outside the courtroom do not let anyone tell you anything about the case, or about anyone involved with it until the trial has ended and I have accepted your verdict and discharged you as jurors. If someone should try to talk to you about the case during the trial, please report it to my Courtroom Deputy.

Fourth, during the trial you should not talk with or speak to any of the parties, lawyers or witnesses involved in this case—you should not even pass the time of day with any of them. It is important not only that you do justice in this case, but that you also give the appearance of doing justice. If a person from one side of the lawsuit sees you talking to a person from the other side—even if it is simply to pass the time of day—an unwarranted and unnecessary suspicion about your fairness might be aroused. If any lawyer, party, or witness does not speak to you when you pass in the hall, ride the elevator or the like, it is because they are not supposed to talk to or visit with you.

Fifth, it may be necessary for you to tell your family, close friends, teachers, coworkers, or employer about your participation in this trial. You can explain when you are required to be in court and can warn them not to ask you about this case, tell you anything they know or think they know about this case, or discuss this case in your presence. You must not communicate with anyone or post information about the parties, witnesses, participants, charges, evidence, or anything else related to this case. You must not tell anyone anything about the jury's deliberations in this case until after I accept your verdict or until I give you specific permission to do so. If you discuss the case with someone other than the other jurors during deliberations, it could create the perception that you have clearly decided the case or that you may be influenced in your verdict by their opinions. That would not be fair to the parties, and it may result in the verdict being thrown out and the case having to be retried. During the trial, while you are in the courthouse and

after you leave for the day, do not provide any information to anyone by any means about this case. Thus, for example, do not talk face-to-face or use any electronic device or media, such as the telephone, a cell or smart phone, computer, the Internet, any Internet service, any text or instant messaging service, any Internet chat room, blog, or website such as Facebook, Snapchat, Instagram, YouTube, or Twitter, or any other way to communicate to anyone any information about this case until I accept your verdict.

Sixth, do not do any research—on the Internet, in libraries, in the newspapers, or in any other way—or make any investigation about this case on your own. Do not visit or view any place discussed in this case and do not use the Internet, Google Maps, or any other program or device to search for or to view any place discussed in the testimony. Also, do not research any information about this case, the law, or the people involved, including the parties, the witnesses, the lawyers, or the judge.

Seventh, do not read any news stories or articles in print, or on the Internet, or in any blog, about the case, or about anyone involved with it, or listen to any radio or television reports about the case or about anyone involved with it. In fact, until the trial is over, I suggest that you avoid reading any newspapers or news journals at all and avoid listening to any television or radio newscasts at all. I do not know whether there might be any news reports of this case, but if there are, you might inadvertently find yourself reading or listening to something before you could do anything about it. If you want, you can have your spouse or a friend save any stories for you to look at after the trial is over. I can assure you, however, that by the time you have heard the evidence in this case, you will know what you need to return a just verdict.

The parties have a right to have the case decided only on evidence they know about and that has been introduced here in court. If you do some research or investigation or experiment that we do not know about, then your verdict may be influenced by inaccurate, incomplete, or misleading information that has not been tested by the trial process,

including the oath to tell the truth and by cross-examination. All of the parties are entitled to a fair trial, rendered by an impartial jury, and you must conduct yourself so as to maintain the integrity of the trial process. If you decide a case based on information not presented in court, you will have denied the parties a fair trial in accordance with the rules of this country and you will have done an injustice. It is very important that you abide by these rules. Remember, you have taken an oath to abide by these rules and you must do so.

Eighth, do not make up your mind during the trial about what the verdict should be. Keep an open mind until after you have gone to the jury room to decide the case and you and your fellow jurors have discussed the evidence.

J. OUTLINE OF TRIAL

The trial will proceed in the following manner:

First, the government will make an opening statement. Next, the defendant's attorney may, but does not have to, make an opening statement. An opening statement is not evidence but is simply a summary of what the attorney expects the evidence to be.

The government will then present its evidence and counsel for the defendant may cross-examine. Following the government's case, the defendant may, but does not have to, present evidence, testify or call other witnesses. If the defendant calls witnesses, the government may cross-examine them.

After presentation of evidence is completed, the attorneys will make their closing arguments to summarize and interpret the evidence for you. As with opening statements, closing arguments are not evidence. The court will instruct you further on the law. After that, you will retire to deliberate on your verdict.

INSTRUCTION NO. 2

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.

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 during trial are not repeated here.

The instructions I am about to give you now as well as those I gave you at the beginning of the trial are in writing and will be available to you in the jury room. Other instructions I may have given will not be in writing and will not be available. 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.

INSTRUCTION NO. 3

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. 4

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 that have been established by the evidence in the case.

Certain things are not evidence. I will 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.

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

INSTRUCTION NO. 5

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, 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.

INSTRUCTION NO. 6

The value of identification testimony depends on the opportunity the witness had to observe the offender at the time of the offense and to make a reliable identification later. Eyewitness identification must be evaluated with particular care.

In evaluating such testimony, you should consider all of the factors mentioned in these instructions concerning your assessment of the credibility of any witness, and you should also consider, in particular, whether the witness had an adequate opportunity to observe the person in question at the time of the offense and whether the identification is reliable. You may consider, in that regard, such matters as the witness's eyesight and ability to observe the person in question under the circumstances, the length of time the witness had to observe the person in question, any impairment of the witness at the time the witness observed the person in question, the prevailing conditions at that time in terms of lighting, visibility or distance and the like, whether the witness had known or observed the person at earlier times, and any description provided by the witness after the event and before identifying the defendant. Factors that bear on the likelihood of misidentification include the passage of time between the witness's exposure to the person in question and identification of the defendant, whether the witness was under stress when they first encountered the person in question, whether the person in question carried a weapon, and the race of the person in question and the witness.

You should also consider whether the identification made by the witness after the offense was the product of their own recollection. You may consider, in that regard, the strength of the identification, and the circumstances under which the identification was made, keeping in mind that a witness may be certain but mistaken.

The government has the burden of proving identity beyond a reasonable doubt. It is not essential that the witness be free from doubt as to the correctness of the identification. However, you, the jury, must be satisfied beyond a reasonable doubt of the accuracy of the identification of the defendant before you may find him guilty. If you are not convinced

beyond a reasonable doubt that the defendant was the person who committed the crime, you must find the defendant not guilty.

INSTRUCTION NO. 7

You have heard recordings of conversations. These conversations were legally recorded, and you may consider the recordings just like any other evidence.

INSTRUCTION NO. 8

You have heard evidence that the defendant robbed a Tobacco Hut store located in Council Bluffs, Iowa, while armed. You may consider this evidence only if you unanimously find it is more likely true than not true that the defendant committed the act. This is a lower standard than proof beyond a reasonable doubt. You decide that by considering all of the evidence relating to the alleged act, then deciding what evidence is more believable.

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 purpose of deciding whether the defendant acted according to a plan or in preparation for commission of a crime. You should give it the weight and value you believe it is entitled to receive.

Remember, even if you find that the defendant may have committed a similar act in the past, this is not evidence that he committed such an act in this case. You may not convict a person simply because you believe he may have committed similar acts in the past. The defendant is on trial only for the crimes charged, and you may consider the evidence of prior acts only on the issue stated above.

INSTRUCTION NO. 9

You have heard evidence that Spencer Scott has made a plea agreement with the government. You have also heard evidence that Scott hopes to receive a reduced sentence on criminal charges pending against him in return for his cooperation with the government in this case. His testimony was received in evidence and may be considered by you.

Scott entered into an agreement with the U.S. Department of Justice which provides that in return for his substantial assistance, the government will recommend a less-severe sentence in his case. Scott is subject to a mandatory-minimum sentence, that is, a sentence that the law provides must be of a certain minimum length. If the prosecutor handling Scott's case believes he has provided substantial assistance, that prosecutor can file in the court in which the charges are pending against this witness a motion to reduce his sentence below the statutory minimum. The judge has no power to reduce a sentence for substantial assistance unless the government, acting through the United States Attorney, files such a motion. If the government files such a motion for reduction of sentence for substantial assistance, then it is up to me to decide whether to reduce the sentence at all, and if so, how much to reduce it.

You may give Scott's testimony such weight as you think it deserves. Whether or not his testimony may have been influenced by his hope of receiving a reduced sentence is for you to decide.

Scott's guilty plea cannot be considered by you as any evidence of this defendant's guilt. Scott's guilty plea can be considered by you only for the purpose of determining how much, if at all, to rely upon his testimony.

INSTRUCTION NO. 10

You have heard testimony from Katie Pattee, who is described as an expert. A person who, by knowledge, skill, training, education, or experience, has 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.

INSTRUCTION NO. 11

Exhibits have been admitted into evidence and can be considered along with all the other evidence to assist you in reaching a verdict. You are not to tamper with the exhibits or their contents, and each exhibit should be returned, along with your verdict, in the same condition as it was when you received it.

INSTRUCTION NO. 12

The Second Superseding Indictment in this case charges the defendant with five different crimes. Count I charges that the defendant committed the crime of conspiring to interfere with commerce by robbery. Counts II and VI charge him with the crime of interfering with commerce by robbery. And Counts III and VII charge him with the crime of using or carrying a firearm during and in relation to a crime of violence. The defendant has pleaded not guilty to each of those charges.

The Second Superseding Indictment is simply the document that formally charges the defendant with the crimes for which he is on trial. The Second Superseding 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 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 verdict.

INSTRUCTION NO. 13

It is a crime for two or more people to agree to commit a crime. The crime of conspiring to interfere with commerce by robbery, as charged in Count I of the Second Superseding Indictment, has four elements, which are:

One, between on or about October 10, 2019, and on or about December 2, 2019, two or more people reached an agreement to commit the crime of interfering with commerce by robbery;

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

Three, at the time the defendant joined in the agreement, the defendant knew the purpose of the agreement; and

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

The next instruction further explains these elements.

If all of these elements have been proved beyond a reasonable doubt as to the defendant, then you must find the defendant guilty of the crime charged under Count I. Otherwise, you must find the defendant not guilty of this crime under Count I.

INSTRUCTION NO. 14

Element One -

Element One requires that two or more people reached an agreement to commit the crime of interfering with commerce by robbery.

The Second Superseding Indictment charges a conspiracy to commit the crime of interfering with commerce by robbery. For you to find that the government has proved a conspiracy, you must unanimously find that there was an agreement to act for this purpose.

The agreement does not need to be a formal agreement or be in writing. A verbal or oral understanding can be sufficient to establish an agreement.

The agreement may last a long time or a short time. The members of an agreement do not all have to join it at the same time. You may find that someone joined the agreement even if you find that person did not know all of the details of the agreement.

A person may be a member of the agreement even if the person does not know all of the other members of the agreement or the person agreed to play only a minor part in the agreement.

Element Two –

Element Two requires that the defendant voluntarily and intentionally joined the agreement.

If you have determined that two or more people reached an agreement to commit the crime of interfering with commerce by robbery, you must next decide whether the defendant voluntarily and intentionally joined that agreement, either at the time it was first formed or at some later time while it was still in effect.

Earlier, in deciding whether two or more people reached an agreement to commit the crime of interfering with commerce by robbery, you could consider the acts and statements of each person alleged to be part of the agreement. Now, in deciding whether

the defendant joined the agreement, you may consider only the acts and statements of the defendant.

A person joins an agreement to commit the crime of interfering with commerce by robbery by voluntarily and intentionally participating in the unlawful plan with the intent to further the crime of interfering with commerce by robbery.

Evidence that a person was present at the scene of an event or acted in the same way as others or associated with others, does not, alone, prove that the person joined a conspiracy. A person who has no knowledge of a conspiracy, but who happens to act in a way that advances the purpose of the conspiracy, does not thereby become a member. A person's mere knowledge of the existence of a conspiracy, or mere knowledge that an objective of a conspiracy was being considered or attempted, or mere approval of the purpose of a conspiracy, is not enough to prove that the person joined in a conspiracy.

To help you decide whether the defendant agreed to commit the crime of interfering with commerce by robbery, you should consider the elements of that crime, which are set forth in Instruction Numbers 16 and 19.

You may consider these elements in determining whether the defendant agreed to commit the crime of interfering with commerce by robbery, keeping in mind that this count of the Second Superseding Indictment only charges a conspiracy to commit the crime of interfering with commerce by robbery and does not charge that the crime of interfering with commerce by robbery was committed.

Element Three –

Element Three requires that the defendant knew the purpose of the agreement at the time the defendant joined the agreement.

A person knows the purpose of the agreement if he is aware of the agreement and does not participate in it through ignorance, mistake, carelessness, negligence, or accident.

It is seldom, if ever, possible to determine directly what was in the defendant's mind. Thus, the defendant's knowledge of the agreement and its purpose can be proved like anything else, from reasonable conclusions drawn from the evidence.

It is not enough that the defendant and other alleged participants in the agreement to commit the crime of interfering with commerce by robbery simply met, discussed matters of common interest, acted in similar ways, or perhaps helped one another. The defendant must have known of the existence and purpose of the agreement. Without such knowledge, the defendant cannot be guilty of conspiracy, even if his acts furthered the conspiracy.

Element Four –

Element Four requires that one of the persons who joined the agreement took some act for the purpose of carrying out or carrying forward the agreement.

The defendant does not have to personally commit an act in furtherance of the agreement, know about it, or witness it. It makes no difference which of the participants in the agreement did the act. This is because a conspiracy is a kind of "partnership" so that under the law each member is an agent or partner of every other member, and each member is bound by or responsible for the acts of every other member done to further their scheme.

The act done in furtherance of the agreement does not have to be an unlawful act. The act may be perfectly innocent in itself.

It is not necessary that the government prove that more than one act was done in furtherance of the agreement. It is sufficient if the government proves one such act; but in that event, in order to return a verdict of guilty, you must all agree which act was done.

INSTRUCTION NO. 15

If you determined that an agreement existed and the defendant joined the agreement, then acts and statements knowingly done or made by a member of the agreement during the existence of the agreement and in furtherance of it, may be considered by you as evidence pertaining to the defendant, even though the acts and 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 the agreement, because a person who knowingly, voluntarily, and intentionally joins an existing conspiracy becomes responsible for all of the conduct of the co-conspirators from the beginning of the conspiracy.

Acts and statements which are made before the conspiracy began or after it ended are admissible only against the person making them and should not be considered by you against any other defendant.

INSTRUCTION NO. 16

The crime of interfering with commerce by robbery, as charged in Count II of the Second Superseding Indictment, has four elements, which are:

One, on or about October 10, 2019, the defendant knowingly robbed the Family Dollar Store located at 2601 N. 16th Street in Omaha, Nebraska;

Two, the robbery involved approximately $220 cash and cigarettes;

Three, the approximately $220 cash and cigarettes were in the custody of an employee of the Family Dollar Store; and

Four, the defendant's actions obstructed, delayed, and/or affected commerce in some way or degree.

"Robbery" means the unlawful taking or obtaining of personal property from the person or in the presence of another, against the person's will. The unlawful taking or obtaining must occur by means of actual or threatened use of force and fear of injury, whether immediately or in the future, to the employee's person.

The term "commerce" includes, among other things, travel, trade, transportation, and communication. And it also means (1) all commerce between any point in one State and any point outside of that State, and (2) all commerce between points within the same State through any place outside of that State.

The phrase "obstructed, delayed, and/or affected commerce" in element four means any action which, in any manner or to any degree interferes with, changes, or alters the movement or transportation or flow of goods, merchandise, money, or other property in commerce.

In considering the fourth element, you must decide whether there is an actual effect on commerce. If you decide that there was any effect at all on commerce, then that is

enough to satisfy this element. The effect can be minimal. Such effect can be proved by one or more of the following: depletion of the assets of a business operating in commerce, the temporary closing of a business to recover from the robbery, loss of sales of an out-of-state commercial product, or business slowdown as a result of the robbery.

It is not necessary for the government to show that the defendant actually intended or anticipated an effect on commerce. All that is necessary is that commerce was affected would probably or potentially be affected as a natural and probable consequence of the defendant's actions.

If all of these elements have been proved beyond a reasonable doubt as to the defendant, then you must find the defendant guilty of the crime charged under Count II. Otherwise, you must find the defendant not guilty of this crime under Count II.

INSTRUCTION NO. 17

The crime of using or carrying a firearm during and in relation to a crime of violence, as charged in Count III of the Second Superseding Indictment, has two elements, which are:

One, the defendant committed the crime of interfering with commerce by robbery as charged in Count II of the Second Superseding Indictment; and

Two, the defendant knowingly used or carried a firearm during and in relation to that crime.

The term "used" means that the firearm was actively employed in the course of the commission of the crime of interfering with commerce by robbery. You may find that a firearm was used during the commission of that crime if you find that it was brandished, displayed, used to strike someone, fired, or that the defendant referred to a firearm that was in his possession.

You may find that a firearm was "carried" during the commission of the crime of interfering with commerce by robbery if you find that the defendant had a firearm on his person.

The term "brandish" means to display all or part of the firearm, or otherwise make the presence of the firearm known to another person, in order to intimidate that person, regardless of whether the firearm is directly visible to that person.

If all of these elements have been proved beyond a reasonable doubt as to the defendant, then you must find the defendant guilty of the crime charged under Count III. Otherwise, you must find the defendant not guilty of this crime under Count III.

INSTRUCTION NO. 18

In addition to using or carrying a firearm during and in relation to a crime of violence, the government alleges the defendant brandished a firearm, as defined in the prior instruction, on or about October 10, 2019, at the Family Dollar Store.

If, but only if, you find the defendant guilty of using or carrying a firearm during and in relation to a crime of violence, as charged in Count III, then you must decide whether the defendant knowingly brandished a firearm during and in relation to that crime and mark your decision on the verdict form.

If you unanimously find beyond a reasonable doubt that the defendant knowingly brandished a firearm during and in relation to a crime of violence, as charged in Count III, then mark "Yes" on the verdict form. Otherwise, mark "No."

INSTRUCTION NO. 19

The crime of interfering with commerce by robbery, as charged in Count VI of the Second Superseding Indictment, has four elements, which are:

One, on or about October 29, 2019, the defendant knowingly robbed the Kwik Shop gas station and convenience store located at 5929 N. 72nd Street in Omaha, Nebraska;

Two, the robbery involved approximately $120 cash;

Three, the approximately $120 cash was in the custody of an employee of the Kwik Shop; and

Four, the defendant's actions obstructed, delayed, and/or affected commerce in some way or degree.

"Robbery" means the unlawful taking or obtaining of personal property from the person or in the presence of another, against the person's will. The unlawful taking or obtaining must occur by means of actual or threatened use of force and fear of injury, whether immediately or in the future, to the employee's person.

The term "commerce" includes, among other things, travel, trade, transportation, and communication. And it also means (1) all commerce between any point in one State and any point outside of that State, and (2) all commerce between points within the same State through any place outside of that State.

The phrase "obstructed, delayed, and/or affected commerce" in element four means any action which, in any manner or to any degree interferes with, changes, or alters the movement or transportation or flow of goods, merchandise, money, or other property in commerce.

In considering the fourth element, you must decide whether there is an actual effect on commerce. If you decide that there was any effect at all on commerce, then that is

enough to satisfy this element. The effect can be minimal. Such effect can be proved by one or more of the following: depletion of the assets of a business operating in commerce, the temporary closing of a business to recover from the robbery, loss of sales of an out-of-state commercial product, or business slowdown as a result of the robbery.

It is not necessary for the government to show that the defendant actually intended or anticipated an effect on commerce. All that is necessary is that commerce was affected would probably or potentially be affected as a natural and probable consequence of the defendant's actions.

If all of these elements have been proved beyond a reasonable doubt as to the defendant, then you must find the defendant guilty of the crime charged under Count VI. Otherwise, you must find the defendant not guilty of this crime under Count VI.

INSTRUCTION NO. 20

The crime of using or carrying a firearm during and in relation to a crime of violence, as charged in Count VII of the Second Superseding Indictment, has two elements, which are:

One, the defendant committed the crime of interfering with commerce by robbery as charged in Count VI of the Second Superseding Indictment; and

Two, the defendant knowingly used or carried a firearm during and in relation to that crime.

The term "used" means that the firearm was actively employed in the course of the commission of the crime of interfering with commerce by robbery. You may find that a firearm was used during the commission of that crime if you find that it was brandished, displayed, used to strike someone, fired, or that the defendant referred to a firearm that was in his possession.

You may find that a firearm was "carried" during the commission of the crime of interfering with commerce by robbery if you find that the defendant had a firearm on his person.

The term "brandish" means to display all or part of the firearm, or otherwise make the presence of the firearm known to another person, in order to intimidate that person, regardless of whether the firearm is directly visible to that person.

If all of these elements have been proved beyond a reasonable doubt as to the defendant, then you must find the defendant guilty of the crime charged under Count VII. Otherwise, you must find the defendant not guilty of this crime under Count VII.

INSTRUCTION NO. 21

In addition to using or carrying a firearm during and in relation to a crime of violence, the government alleges the defendant brandished a firearm, as defined in the prior instruction, on or about October 29, 2019, at the Kwik Shop.

If, but only if, you find the defendant guilty of using or carrying a firearm during and in relation to a crime of violence, as charged in Count VII, then you must decide whether the defendant knowingly brandished a firearm during and in relation to that crime and mark your decision on the verdict form.

If you unanimously find beyond a reasonable doubt that the defendant knowingly brandished a firearm during and in relation to a crime of violence, as charged in Count VII, then mark "Yes" on the verdict form. Otherwise, mark "No."

INSTRUCTION NO. 22

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. 23

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.

INSTRUCTION NO. 24

The Second Superseding Indictment charges the offenses were committed "on or about" or "between" certain dates. The government must prove that the offense happened reasonably close to those dates or that timeframe but is not required to prove the alleged offense happened on the exact dates alleged.

INSTRUCTION NO. 25

In conducting your deliberations and returning your verdicts, 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 Courtroom Deputy, 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 verdicts must be based solely on the evidence and on the law which I have given to you in my instructions. Each verdict, whether guilty or not guilty, must be

unanimous. Nothing I have said or done is intended to suggest what your verdicts should be—that is entirely for you to decide.

Finally, the verdict form is simply the written notice of the decisions that you reach in this case. You will take this form to the jury room, and when each of you has agreed on the verdicts, your foreperson will fill in the form, sign and date it, and advise my chambers staff by picking up the telephone in the jury deliberation room (which rings directly to chambers) or by calling (402) 661-7310, that you are ready to return to the courtroom.

Submitted to jury:
1:54 pm on
March 23, 2023