

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF IOWA  
CEDAR RAPIDS DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

RAYMOND CORTEZ,

Defendant.

No. 12-CR-74-LRR

**FINAL JURY INSTRUCTIONS**

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Ladies and Gentlemen of the Jury:

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

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

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

**INSTRUCTION NO. 1**

In considering these instructions, attach no importance or significance whatsoever to the order in which they are given.

**INSTRUCTION NO. 2**

Neither in these instructions nor in any ruling, action or remark that I have made during this trial have I intended to give any opinion or suggestion as to what the facts are or what your verdict should be.

**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 following: the testimony of the witnesses, including the defendant, and the documents and other things received as exhibits.

You may use reason and common sense to draw deductions or conclusions from facts which have been established by the evidence in the case.

Certain things are not evidence. I shall list those things again for you now:

1. Statements, arguments, questions and comments by the lawyers are not evidence.
2. Anything that might have been said by jurors, the attorneys or the judge during the jury selection process is not evidence.
3. Objections are not evidence. The parties 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.
4. Testimony that I struck from the record, or told you to disregard, is not evidence and must not be considered.
5. Anything you saw or heard about this case outside the courtroom is not evidence.

During the trial, documents were referred to but they were not admitted into evidence and, therefore, they will not be available to you in the jury room during deliberations.

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

**INSTRUCTION NO. 5**

There are two types of evidence from which a jury may properly find the truth as to the facts of a case: direct evidence and circumstantial evidence. Direct evidence is the evidence of the witnesses to a fact or facts of which they have knowledge by means of their senses. The other is circumstantial evidence—the proof of a chain of circumstances pointing to the existence or nonexistence of certain facts. 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.

### **INSTRUCTION NO. 6**

The jurors are the sole judges of the weight and credibility of the testimony and the value to be given to the testimony of each witness, including the defendant, who has testified in this case. 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.

You should judge the testimony of the defendant in the same manner as you judge the testimony of any other witness.

**INSTRUCTION NO. 7**

In a previous instruction, I instructed you generally on the credibility of witnesses. I now give you this further instruction on how the credibility of a witness can be “impeached” and how you are to consider the testimony of certain witnesses.

A witness may be discredited or impeached by contradictory evidence; by showing that the witness testified falsely concerning a material matter; by showing the witness has a motive to be untruthful; or by evidence that at some other time the witness has said or done something, or has failed to say or do something, that is inconsistent with the witness’s present testimony.

You have heard evidence that certain witnesses were once convicted of a crime. You may use that evidence only to help you decide whether to believe these witnesses and how much weight to give their testimony.

You have heard evidence that witnesses have pleaded guilty to crimes which arose out of the same events for which the defendant is on trial here. You must not consider those guilty pleas as any evidence of this defendant’s guilt. You may consider those witnesses’ guilty pleas only for the purposes of determining how much, if at all, to rely upon their testimony and to show the witnesses’ acknowledgment of participation in the offense or offenses to which they pleaded guilty.

**(CONTINUED)**

**INSTRUCTION NO. 7 (Cont'd)**

Finally, you have heard testimony from witnesses who have received or hope to receive reduced sentences in return for the witnesses' cooperation with the government in this case. If the prosecutor handling a witness's case believes the witness provided substantial assistance, that prosecutor can file a motion to reduce the witness's sentence. After a sentence is imposed, 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 such a motion for reduction of sentence for substantial assistance is filed by the government, then it is up to the judge to decide whether to reduce the sentence at all, and if so, how much to reduce it. You may give the testimony of these witnesses such weight as you think it deserves. Whether or not the testimony of a witness may have been influenced by the witness's receipt of a reduced sentence or hope of receiving a reduced sentence is for you to decide.

**INSTRUCTION NO. 8**

Exhibits have been admitted into evidence and are to be considered along with all of the other evidence to assist you in reaching your verdict. You are not to tamper with the exhibits or their contents, and you should leave the exhibits in the jury room in the same condition as they were received by you.

**INSTRUCTION NO. 9**

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. 10**

The Indictment in this case charges that, on or about November 20, 2007, in the Northern District of Iowa, the defendant willfully and knowingly made materially false, fictitious and fraudulent statements and representations in a matter within the jurisdiction of the United States Postal Inspection Service.

The defendant has pleaded not guilty to this charge.

The Indictment is simply the document that formally charges the defendant with the crime for which he is on trial. The Indictment is not evidence. You must presume the defendant to be innocent at this stage in the proceedings. Thus, the trial of the defendant begins 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 proves, beyond a reasonable doubt, each element of the crime charged.

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.

### INSTRUCTION NO. 11

The crime of making a false, fictitious or fraudulent material statement or representation about a matter within the jurisdiction of an agency of the United States, as charged in Count 1 of the Indictment, has five elements:

*One*, the defendant knowingly and intentionally made the statement or representation as charged;

*Two*, that statement or representation was false, fictitious or fraudulent;

*Three*, the statement or representation concerned a material fact;

*Four*, the statement or representation was made about a matter within the jurisdiction of the United States Postal Inspection Service; and

*Five*, the defendant knew it was untrue when he made the statement or representation.

A statement is “false” or “fictitious” if it was untrue when it was made. A statement is “fraudulent” if the defendant made it with the intent to deceive.

A “material fact” is a fact that would naturally influence or is capable of influencing a decision of the agency. Whether a statement or representation is “material” does not depend on whether the agency was actually deceived or misled.

You may find that the statement or representation was made about a matter within the jurisdiction of the United States Postal Inspection Service if you find that the United States Postal Inspection Service’s function includes investigating fraud.

If all of these elements have been proved beyond a reasonable doubt, then you must find the defendant guilty of the crime charged under Count 1; otherwise, you must find the defendant not guilty of the crime charged under Count 1.

**INSTRUCTION NO. 12**

Intent may be proven by circumstantial evidence. It rarely can be established by other means. While witnesses may see or hear and thus be able to give direct evidence of what a person does or fails to do, there can be no eyewitness account of the state of mind with which the acts were done or omitted. But what a defendant does or fails to do may indicate intent or lack of intent to commit an offense.

You may consider it reasonable to draw the inference and find that a person intends the natural and probable consequences of acts knowingly done, but you are not required to do so. As I have previously mentioned, it is entirely up to you to decide what facts to find from the evidence.

**INSTRUCTION NO. 13**

The government is not required to prove that the defendant knew that his acts or omissions were unlawful. An act is done “knowingly” if a defendant is aware of the act and did not act through ignorance, mistake or accident. You may consider the evidence of the defendant’s acts and words, along with other evidence, in deciding whether the defendant acted knowingly.

**INSTRUCTION NO. 14**

You will note that the Indictment charges that the offense was committed “on or about” a certain date. The government need not prove with certainty the exact date of the offense charged. It is sufficient if the evidence establishes that the offense occurred within a reasonable time of the date alleged in the Indictment.

**INSTRUCTION NO. 15**

Throughout the trial, you have been permitted to take notes. Your notes should be used only as memory aids, and you should not give your notes precedence over your independent recollection of the evidence.

In any conflict between your notes, a fellow juror's notes and your memory, your memory must prevail. Remember that notes sometimes contain the mental impressions of the note taker and can be used only to help you recollect what the testimony was. At the conclusion of your deliberations, your notes should be left in the jury room for destruction.

### INSTRUCTION NO. 16

In conducting your deliberations and returning your verdict, there are certain rules you must follow. I shall 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 an agreement if you can do so without violence to individual judgment, because your 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 your 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 Court Security Officer, signed by one or more jurors. I will respond as soon as possible either in writing or orally in open court. Remember that you should not tell anyone—including me—how your votes stand numerically.

*Fifth*, your verdict must be based solely on the evidence and on the law which I have given to you in my instructions. The verdict, whether guilty or not guilty, must be unanimous. Nothing I have said or done is intended to suggest what your verdict might be—that is entirely for you to decide.

**INSTRUCTION NO. 17**

Attached to these instructions you will find the Verdict Form. This is simply the written notice of the decision that you reach in this case. The answer to the Verdict Form must be the unanimous decision of the jury.

You will take the Verdict Form to the jury room, and when you have completed your deliberations and each of you has agreed to the answer to the Verdict Form, your foreperson will fill out the Verdict Form, sign and date it and advise the Court Security Officer that you are ready to return to the courtroom. Your foreperson should place the signed Verdict Form in the blue folder, which the court will provide you, and then your foreperson should bring the blue folder when returning to the courtroom.

Finally, members of the jury, take this case and give it your most careful consideration, and then without fear or favor, prejudice or bias of any kind, return the Verdict Form in accord with the evidence and these instructions.

December 11, 2012

Date

Linda R. Reade

Linda R. Reade, Chief Judge  
United States District Court  
Northern District of Iowa