

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

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MARLYS FLOYD, and REBECCA
PIPPERT,

Defendants.

No. CR 05-0028-LRR

FINAL JURY INSTRUCTIONS

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 NUMBER _____

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

INSTRUCTION NUMBER _____

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 verdicts should be.

INSTRUCTION NUMBER _____

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 NUMBER _____

I have mentioned the word “evidence.” The “evidence” in this case consists of the following: the testimony of the witnesses, the documents and other things received as exhibits, and stipulations, that is, agreements between the parties that certain facts are as they have stated.

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. 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.

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 NUMBER ____

As you know, there are two defendants on trial here: Marlys Floyd and Rebecca Pippert. Each defendant is entitled to have her case decided solely on the evidence which applies to her. Some of the evidence in the case is limited under the rules of evidence to one of the defendants, and cannot be considered against the other defendant.

INSTRUCTION NUMBER _____

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 witness 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 NUMBER _____

The jurors are the sole judges of the weight and credibility of the testimony and the value to be given to each witness (including a 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.

INSTRUCTION NUMBER ____

In the 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 a 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.

INSTRUCTION NUMBER _____

You have heard testimony that the defendants made out-of-court statements to law enforcement officers. It is for you to decide: (1) whether the defendant under consideration by you made the out-of-court statements; and (2) if so, how much weight you should give to the out-of-court statements. In making these decisions you should consider all of the evidence, including the circumstances under which the out-of-court statements may have been made.

You may consider the out-of-court statements of Marlys Floyd only in the case against her, and not in the case against Rebecca Pippert. What that means is that you may consider defendant Marlys Floyd's out-of-court statements in the case against her and for that purpose rely on them as much or as little as you think proper, but you may not consider or discuss the out-of-court statements in any way when you are deciding if the government has proved, beyond a reasonable doubt, its case against Rebecca Pippert.

Likewise, you may consider the out-of-court statements of Rebecca Pippert only in the case against her, and not in the case against Marlys Floyd. What that means is that you may consider defendant Rebecca Pippert's out-of-court statements in the case against her and for that purpose rely on them as much or as little as you think proper, but you may not consider or discuss the out-of-court statements in any way when you are deciding if the government has proved, beyond a reasonable doubt, its case against Marlys Floyd.

On the other hand you may consider defendant Rebecca Pippert's in-court testimony as you would consider the testimony of any other witness when deciding any issue in this case either relating to her or Marlys Floyd.

INSTRUCTION NUMBER _____

In this case, defendant Marlys Floyd did not testify. No inference of guilt can be drawn from this. A defendant is not required to testify. The burden of proof remains upon the government to prove the guilt of each defendant.

INSTRUCTION NUMBER ____

Exhibits have been admitted into evidence and are to 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 into open court, along with your verdict, in the same condition as it was received by you.

INSTRUCTION NUMBER _____

A reasonable doubt is a doubt based upon reason and common sense, and not the mere possibility of innocence. A reasonable doubt is the kind of doubt that would make a reasonable person hesitate to act. Proof beyond a reasonable doubt, therefore, must be proof of such a convincing character that a reasonable person would not hesitate to rely and act upon it. However, proof beyond a reasonable doubt does not mean proof beyond all possible doubt.

INSTRUCTION NUMBER _____

The Indictment in this case charges each defendant with four different crimes.

Under Count 1, the Indictment charges that on or about March 11, 2005, the defendants knowingly deposited and caused to be deposited a written communication addressed to “James Gerk Att’n, 115 3rd St SE, CR, Ia 52403,” to be delivered via the U.S. mails. The Indictment alleges the communication contained a threat to injure the addressee or another person.

Under Count 2, the Indictment charges that on or about March 11, 2005, the defendants knowingly deposited and caused to be deposited a written communication addressed to “Nancy Baumgartner Judge, Linn County Courthouse, PO Box 1468, CR, Ia 52406-1468,” to be delivered via the U.S. mails. The Indictment alleges the communication contained a threat to injure the addressee or another person.

Under Count 3, the Indictment charges that on or about March 11, 2005, the defendants knowingly deposited and caused to be deposited a written communication addressed to “District Court Judges, Linn County Courthouse, PO Box 1468, CR, Ia 52406-1468,” to be delivered via the U.S. mails. The Indictment alleges the communication contained a threat to injure the addressee or another person.

Under Count 4, the Indictment charges that on or about March 11, 2005, the defendants knowingly deposited and caused to be deposited a written communication addressed to “Judge Horan, District Court Judges, Linn County Courthouse, PO Box 1468, CR, Ia 52406-1468,” to be delivered via the U.S. mails. The Indictment alleges the communication contained a threat to injure the addressee or another person.

(CONTINUED)

INSTRUCTION NUMBER _____ (Cont'd)

Each defendant has pleaded not guilty to each crime with which she is charged.

As I told you at the beginning of the trial, an Indictment is simply an accusation. It is not evidence of anything. To the contrary, each defendant is presumed to be innocent. Thus each defendant, even though charged, begins the trial with no evidence against her. The presumption of innocence alone is sufficient to find a defendant not guilty and can be overcome only if the government proves, beyond a reasonable doubt, each essential element of a particular crime charged.

Keep in mind that you must give separate consideration to the evidence about each individual defendant. Each defendant is entitled to be treated separately, and you must return a separate verdict for each defendant. Also keep in mind that you must consider, separately, each crime charged against each individual defendant, and you must return a separate verdict for each of those crimes charged.

There is no burden upon a defendant to prove that she is innocent.

INSTRUCTION NUMBER _____

The crime of mailing a threatening communication, as charged in Counts 1 through 4 of the Indictment, has two essential elements, which are:

- One*, on or about March 11, 2005, the defendant under consideration by you knowingly sent or caused to be sent or delivered, by the United States Postal Service, a communication, as alleged in the Indictment (see Instruction Number _____), to: James Gerk [Count 1], Nancy Baumgartner [Count 2], District Court Judges, Linn County Courthouse [Count 3], Judge Horan [Count 4]; and
- Two*, the communication contained a threat to injure the recipient or another person.

If both of the essential elements have been proved beyond a reasonable doubt as to the Count under consideration by you, then you must find the defendant under consideration by you guilty of the crime charged in the Count under consideration by you; otherwise you must find the defendant under consideration by you not guilty of the crime charged in the Count under consideration by you.

INSTRUCTION NUMBER _____

A communication may be considered threatening if a reasonable recipient, familiar with the context of the communication, would interpret it as a threat to injure. A “threat to injure” means an unambiguous expression of a determination or intent to injure presently or in the future. In determining whether a reasonable person would feel threatened, you must review the totality of the circumstances within which the communication was made. However, the government is not required to prove that a defendant actually intended to carry out the threat or had the ability to carry out the threat.

INSTRUCTION NUMBER _____

Either defendant may also be found guilty of mailing a threatening communication as charged in Counts 1 through 4 even if she personally did not do every act constituting the offense charged in the Count under consideration by you, if she aided and abetted the commission of the offense in the Count under consideration by you.

In order to have aided and abetted the commission of a crime a person must, before or at the time the crime was committed,:

- (1) have known the offense of mailing a threatening communication in the Count under consideration by you was being committed or going to be committed; and
- (2) have knowingly acted in some way for the purpose of causing, encouraging, or aiding the commission of the offense of mailing a threatening communication in the Count under consideration by you.

For you to find the defendant under consideration by you guilty of the offense of mailing a threatening communication in the Count under consideration by you by reason of aiding and abetting, the Government must prove beyond a reasonable doubt that all of the essential elements of that offense were committed by some person or persons and that the defendant under consideration by you aided and abetted the commission of that crime.

You should understand that merely being present at the scene of an event, or merely acting in the same way as others or merely associating with others, does not prove that a person has become an aider and abettor. A person who has no knowledge that a crime is being committed or about to be committed, but who happens to act in a way which advances some offense, does not thereby become an aider and abettor.

INSTRUCTION NUMBER _____

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

INSTRUCTION NUMBER_____

An act is done “knowingly” if the defendant under consideration by you realized what she was doing and did not act through ignorance, mistake or accident. The government is not required to prove that a defendant knew that her acts or omissions were unlawful. You may consider the evidence of a defendant’s acts and words, along with all other evidence, in deciding whether the defendant under consideration by you acted knowingly.

INSTRUCTION NUMBER _____

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 NUMBER _____

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 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 of 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 a 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.

(CONTINUED)

INSTRUCTION NUMBER _____ (Cont'd.)

Fourth, if you need to communicate with me during your deliberations, you may send a note to me through the marshal or 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.

Finally, 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.

INSTRUCTION NUMBER _____

Attached to these instructions you will find eight Verdict Forms. The Verdict Forms are simply the written notice of the decisions that you reach in this case. The answer to each Verdict Form must be the unanimous decisions of the jury.

You will take the Verdict Forms to the jury room, and when you have completed your deliberations and each of you has agreed on an answer to each Verdict Form, your foreperson will fill out each Form, sign and date it, and advise the marshal or court security officer that you are ready to return 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 such verdicts as accords with the evidence and these instructions.

DATE

**LINDA R. READE
JUDGE, U. S. DISTRICT COURT**

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

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MARLYS FLOYD,

Defendant.

No. CR 05-0028-LRR

VERDICT FORM - COUNT 1

We, the Jury, find the defendant, Marlys Floyd, _____ of the crime of
Not Guilty/Guilty
knowingly depositing, causing to be deposited, or aiding and abetting the depositing of or
the causing to be deposited of, for delivery by the United States Postal Service, a
threatening communication addressed to “James Gerk Att’n, 115 3rd St SE, CR, Ia 52403”
on or about March 11, 2005, as charged in Count 1 of the Indictment.

FOREPERSON

DATE

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

UNITED STATES OF AMERICA,

Plaintiff,

vs.

REBECCA PIPPERT,

Defendant.

No. CR 05-0028-LRR

VERDICT FORM - COUNT 1

We, the Jury, find the defendant, Rebecca Pippert, _____ of the crime
Not Guilty/Guilty
of knowingly depositing, causing to be deposited, or aiding and abetting the depositing of
or the causing to be deposited of, for delivery by the United States Postal Service, a
threatening communication addressed to “James Gerk Att’n, 115 3rd St SE, CR, Ia 52403”
on or about March 11, 2005, as charged in Count 1 of the Indictment.

FOREPERSON

DATE

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

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MARLYS FLOYD,

Defendant.

No. CR 05-0028-LRR

VERDICT FORM - COUNT 2

We, the Jury, find the defendant, Marlys Floyd, _____ of the crime of
Not Guilty/Guilty
knowingly depositing, causing to be deposited, or aiding and abetting the depositing of or
the causing to be deposited of, for delivery by the United States Postal Service, a
threatening communication addressed to “Nancy Baumgartner Judge, Linn County
Courthouse, PO Box 1468, CR, Ia 52406-1468” on or about March 11, 2005, as charged
in Count 2 of the Indictment.

FOREPERSON

DATE

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

UNITED STATES OF AMERICA,

Plaintiff,

vs.

REBECCA PIPPERT,

Defendant.

No. CR 05-0028-LRR

VERDICT FORM - COUNT 2

We, the Jury, find the defendant, Rebecca Pippert, _____ of the crime
Not Guilty/Guilty
of knowingly depositing, causing to be deposited, or aiding and abetting the depositing of
or the causing to be deposited of, for delivery by the United States Postal Service, a
threatening communication addressed to “Nancy Baumgartner Judge, Linn County
Courthouse, PO Box 1468, CR, Ia 52406-1468” on or about March 11, 2005, as charged
in Count 2 of the Indictment.

FOREPERSON

DATE

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

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MARLYS FLOYD,

Defendant.

No. CR 05-0028-LRR

VERDICT FORM - COUNT 3

We, the Jury, find the defendant, Marlys Floyd, _____ of the crime of
Not Guilty/Guilty
knowingly depositing, causing to be deposited, or aiding and abetting the depositing of or
the causing to be deposited of, for delivery by the United States Postal Service, a
threatening communication addressed to “District Court Judges, Linn County Courthouse,
PO Box 1468, CR, Ia 52406-1468” on or about March 11, 2005, as charged in Count 3 of
the Indictment.

FOREPERSON

DATE

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

UNITED STATES OF AMERICA,

Plaintiff,

vs.

REBECCA PIPPERT,

Defendant.

No. CR 05-0028-LRR

VERDICT FORM - COUNT 3

We, the Jury, find the defendant, Rebecca Pippert, _____ of the crime
Not Guilty/Guilty
of knowingly depositing, causing to be deposited, or aiding and abetting the depositing of
or the causing to be deposited of, for delivery by the United States Postal Service, a
threatening communication addressed to “District Court Judges, Linn County Courthouse,
PO Box 1468, CR, Ia 52406-1468” on or about March 11, 2005, as charged in Count 3 of
the Indictment.

FOREPERSON

DATE

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

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MARLYS FLOYD,

Defendant.

No. CR 05-0028-LRR

VERDICT FORM - COUNT 4

We, the Jury, find the defendant, Marlys Floyd, _____ of the crime of
Not Guilty/Guilty
knowingly depositing, causing to be deposited, or aiding and abetting the depositing of or
the causing to be deposited of, for delivery by the United States Postal Service, a
threatening communication addressed to “Judge Horan, District Court Judges, Linn County
Courthouse, PO Box 1468, CR, Ia 52406-1468,” on or about March 11, 2005, as charged
in Count 4 of the Indictment.

FOREPERSON

DATE

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

UNITED STATES OF AMERICA,

Plaintiff,

vs.

REBECCA PIPPERT,

Defendant.

No. CR 05-0028-LRR

VERDICT FORM - COUNT 4

We, the Jury, find the defendant, Rebecca Pippert, _____ of the crime
Not Guilty/Guilty
of knowingly depositing, causing to be deposited, or aiding and abetting the depositing of
or the causing to be deposited of, for delivery by the United States Postal Service, a
threatening communication addressed to “Judge Horan, District Court Judges, Linn County
Courthouse, PO Box 1468, CR, Ia 52406-1468” on or about March 11, 2005, as charged
in Count 4 of the Indictment.

FOREPERSON

DATE