

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

UNITED STATES OF AMERICA,

Plaintiff,

vs.

LORENZO HARRIS-THOMPSON,

Defendant.

No. 12-CR-10-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 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 verdicts 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 just verdicts, 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 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 testimony from certain witnesses who stated that they participated in one or more of the crimes charged against the defendant. Their testimony was received in evidence and may be considered by you. You may give their testimony such weight as you think it deserves. Whether or not their testimony may have been influenced by their desire to please the government or to strike a good bargain with the government about their own situation is for you to determine.

You have heard evidence that certain witnesses made plea agreements with the government. Their testimony was received in evidence and may be considered by you. You may give their testimony such weight as you think it deserves. Whether or not their testimony may have been influenced by the plea agreement is for you to determine.

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

(CONTINUED)

INSTRUCTION NO. 7 (Cont'd)

Finally, you have heard evidence that certain witnesses hope to receive a reduced sentence on criminal charges pending against these witnesses 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 in the court in which the charges are pending against the witness a motion to reduce the witness's sentence. 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 testimony of the witnesses may have been influenced by the witnesses' 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 verdicts. 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

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

You were also provided with transcripts of these conversations. Those transcripts also undertake to identify the speakers engaged in the conversations. You were permitted to have the transcripts for the limited purpose of helping you follow the conversations as you listened to the recordings, and also helping you keep track of the speakers. Differences in meaning between what you heard in the recordings and read in the transcripts may be caused by such things as the inflection in a speaker's voice. It is what you heard, however, and not what you read, that is the evidence.

You are specifically instructed that whether the transcripts correctly or incorrectly reflect the conversations or the identities of the speakers is entirely for you to decide based upon what you have heard here about the preparation of the transcripts, and upon your own examination of the transcripts in relation to what you heard on the audio recordings. If you decide that the transcripts are in any respect incorrect or unreliable, you should disregard them to that extent.

INSTRUCTION NO. 10

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 NO. 11

The Indictment in the case charges the defendant with three separate crimes:

Under Count 1, the Indictment charges that, between about September 2011 and January 2012, in the Northern District of Iowa, the defendant corruptly endeavored to influence, obstruct and impede the due administration of justice in *United States v. Lorenzo Harris-Thompson et al.*, Case Number 11-CR-55-LRR, in the United States District Court for the Northern District of Iowa, by directing others to collect information about

, a potential witness; by planning to have harmed or killed; and by directing others to use money to pay another person to kill

Under Count 2, the Indictment charges that, on or about November 17, 2011, in the Northern District of Iowa, the defendant attempted to kill a potential witness by hiring another to kill the potential witness with the intent to prevent the attendance and potential testimony of the potential witness in an official proceeding, specifically the United States District Court sentencing hearing of the defendant.

Under Count 3, the Indictment charges that, on or about November 17, 2011, in the Northern District of Iowa, the defendant used or caused another to use a facility of interstate commerce, namely a telephone, with the intent that the murder of a person be committed in violation of the laws of the United States and the State of Iowa as consideration for the receipt of, and as consideration for a promise and agreement to pay, five thousand dollars in United States currency.

The defendant has pleaded not guilty to each of these charges.

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INSTRUCTION NO. 11 (Cont'd)

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, the defendant is presumed to be innocent. Thus the defendant, even though charged, begins the trial 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.

Keep in mind that each count charges a separate crime. You must consider each count separately, and return a separate verdict for each count.

INSTRUCTION NO. 12

The crime of obstruction of justice, as charged in Count 1 of the Indictment, has three elements, which are:

One, between about September 2011 and January 2012, the defendant directed others to collect information about a potential witness in the defendant's federal sentencing hearing; planned to have the witness harmed or killed; or directed others to use money to pay another person to kill the witness;

Two, the defendant knew that the federal sentencing hearing was pending; and

Three, in committing these acts, the defendant corruptly endeavored to influence, obstruct or impede the due administration of justice.

If the government proves all of these elements beyond a reasonable doubt as to Count 1, then you must find the defendant guilty of that count. Otherwise, you must find the defendant not guilty of the crime charged under Count 1.

INSTRUCTION NO. 13

A witness is a person who is expected by the defendant to be called to testify in a pending judicial proceeding, including a sentencing hearing or grand jury investigation. It is not necessary that the witness actually have been subpoenaed to testify in a pending judicial proceeding or grand jury investigation.

The phrase "corruptly endeavored" means that the defendant voluntarily and intentionally (1) directed others to collect information about a potential witness in the defendant's federal sentencing hearing; (2) planned to have the witness harmed or killed; or (3) directed others to use money to pay another person to kill the witness, and, in doing so, the defendant acted with the intent to influence a judicial proceeding so as to benefit himself or another or subvert or undermine the due administration of justice and with the knowledge that his actions were likely to affect a judicial proceeding. The endeavor need not have been successful, but it must have had at least a reasonable tendency to influence, obstruct or impede the due administration of justice.

INSTRUCTION NO. 14

The crime of attempting to kill a person to prevent his attendance at a federal sentencing hearing, as charged in Count 2 of the Indictment, has two elements, which are:

One, on or about November 17, 2011, the defendant attempted to kill a person; and

Two, the defendant did so with the intent to prevent the testimony of that person in the federal sentencing hearing of the defendant in the Northern District of Iowa.

If the government proves both of these elements beyond a reasonable doubt as to Count 2, then you must find the defendant guilty of that count. Otherwise, you must find the defendant not guilty of the crime charged under Count 2.

INSTRUCTION NO. 15

A person may be found guilty of an attempt if he intended to kill a person and voluntarily and intentionally carried out some act which was a substantial step toward that killing.

A substantial step, as used in this instruction, must be something more than mere preparation, yet may be less than the last act necessary before the actual commission of the substantive crime. In order for behavior to be punishable as an attempt, it need not be incompatible with innocence, yet it must be necessary to the consummation of the crime and be of such a nature that a reasonable observer, viewing it in context could conclude beyond a reasonable doubt that it was undertaken in accordance with a design to violate the statute.

INSTRUCTION NO. 16

The term "kill" as used in these instructions can mean first-degree or second-degree murder. The crime of first-degree murder has three elements, which are:

One, the unlawful killing of an individual;

Two, done with malice aforethought; and

Three, the killing was premeditated.

The crime of second-degree murder has two elements, which are:

One, the unlawful killing of an individual; and

Two, done with malice aforethought.

As used in this instruction, "malice aforethought" means an intent, at the time of a killing, willfully to take the life of a human being, or an intent willfully to act in callous and wanton disregard of the consequences to human life; but "malice aforethought" does not necessarily imply any ill will, spite or hatred toward the individual killed.

A killing is premeditated when it is intentional and the result of planning or deliberation. The amount of time needed for premeditation of a killing depends on the person and the circumstances. It must be long enough for the defendant, after forming the intent to kill, to be fully conscious of his intent, and to have thought about the killing.

For there to be premeditation, the defendant must think about the taking of a human life before acting. The amount of time required for premeditation cannot be arbitrarily fixed. The time required varies as the minds and temperaments of people differ and according to the surrounding circumstances in which they may be placed. Any interval of time between forming the intent to kill and acting on that intent which is long enough for the defendant to be fully conscious and mindful of what he intended and willfully set about to do is sufficient to justify the finding of premeditation.

INSTRUCTION NO. 17

The crime of using a telephone in a murder for hire, as charged in Count 3 of the Indictment, has three elements, which are:

One, on or about November 17, 2011, the defendant used or caused another person to use a facility of interstate commerce;

Two, the defendant intended that a murder be committed; and

Three, the defendant intended that the murder be committed as consideration for the receipt of or a promise to pay anything of pecuniary value.

If the government proves all of these elements beyond a reasonable doubt as to Count 3, then you must find the defendant guilty of that count. Otherwise, you must find the defendant not guilty of the crime charged under Count 3.

The term "anything of pecuniary value" means anything of value in the form of money, a negotiable instrument, a commercial interest or anything else the primary significance of which is economic advantage.

The term "facility of interstate or foreign commerce" includes any means of transportation or communication, including a telephone connected to an interstate communications system.

INSTRUCTION NO. 18

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. 19

The government is not required to prove that the defendant knew that his acts or omissions were unlawful. An act is done "knowingly" if the 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 all the other evidence, in deciding whether the defendant acted knowingly.

INSTRUCTION NO. 20

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

INSTRUCTION NO. 21

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. 22

In conducting your deliberations and returning your verdicts, 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 verdicts—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 verdicts.

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

INSTRUCTION NO. 23

Attached to these instructions you will find the Verdict Forms and the Interrogatory Forms. The Verdict Forms and the Interrogatory Forms are simply the written notices of the decisions that you reach in this case. The answers to the Verdict Forms and the Interrogatory Forms must be the unanimous decisions of the jury.

You will take the Verdict Forms and the Interrogatory Forms to the jury room, and when you have completed your deliberations and each of you has agreed to the answers to the Verdict Forms and the Interrogatory Forms, your foreperson will fill out the Verdict Forms and the Interrogatory Forms, sign and date them and advise the Court Security Officer that you are ready to return to the courtroom. Your foreperson should place the signed Verdict Forms and Interrogatory Forms 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 Forms and the Interrogatory Forms in accord with the evidence and these instructions.

June 27, 2012
Date

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