

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

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MICHAEL CLAYTON,

Defendant.

No. CR 13-3022-MWB

**INSTRUCTIONS  
TO THE JURY**

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**VERDICT FORM**

## **No. 1 — INTRODUCTION**

Congratulations on your selection as a juror! These Instructions are to help you better understand the trial and your role in it.

In an Indictment, a Grand Jury has charged defendant Michael Clayton with “bank robbery.” An Indictment is simply an accusation—it is not evidence of anything. The defendant has pled not guilty to the crime charged against him, and he is presumed absolutely not guilty of that offense, unless and until the prosecution proves his guilt on that offense beyond a reasonable doubt.

You must decide during your deliberations whether or not the prosecution has proved the defendant’s guilt on the offense charged beyond a reasonable doubt. In making your decision, you are the sole judges of the facts. You must not decide this case based on personal likes or dislikes, generalizations, gut feelings, prejudices, sympathies, stereotypes, or biases. The law demands that you return a just verdict, based solely on the evidence, your individual evaluation of that evidence, your reason and common sense, and these instructions. Do not take anything that I have said or done or that I may say or do as indicating what I think of the evidence or what I think your verdict should be.

Remember, only defendant Michael Clayton, and not anyone else, is on trial. Also, the defendant is on trial only for the “bank robbery” offense charged against him in the Indictment, and not for anything else.

Please remember that this case is important to the parties and to the fair administration of justice. Therefore, please be patient, consider all of the evidence, and do not be in a hurry to reach a verdict just to be finished with the case.

## **No. 2 — PRESUMPTION OF INNOCENCE AND BURDEN OF PROOF**

The presumption of innocence means that the defendant is presumed to be absolutely not guilty.

- This presumption means that you must put aside all suspicion that might arise from the defendant's arrest, the charge, or the fact that he is here in court
- This presumption remains with the defendant throughout the trial
- This presumption is enough, alone, for you to find the defendant not guilty, unless the prosecution proves, beyond a reasonable doubt, all of the elements of the offense charged against him

The burden is always on the prosecution to prove guilt beyond a reasonable doubt.

- This burden never, ever shifts to the defendant to prove his innocence
- This burden means that the defendant does not have to call any witnesses, produce any evidence, cross-examine the prosecution's witnesses, or testify
- This burden means that, if the defendant does not testify, you must not consider that fact in any way, or even discuss it, in arriving at your verdict
- This burden means that you must find the defendant not guilty of the offense charged against him, unless the prosecution proves beyond a

reasonable doubt that he has committed each and every element of that offense

### **No. 3 — REASONABLE DOUBT**

A reasonable doubt is a doubt based upon reason and common sense.

- A reasonable doubt may arise from evidence produced by the prosecution or the defendant, keeping in mind that the defendant never, ever has the burden or duty to call any witnesses or to produce any evidence
- A reasonable doubt may arise from the prosecution's lack of evidence

The prosecution must prove the defendant's guilt beyond a reasonable doubt.

- Proof beyond a reasonable doubt requires careful and impartial consideration of all of the evidence in the case before making a decision
- Proof beyond a reasonable doubt is proof so convincing that you would be willing to rely and act on it in the most important of your own affairs

The prosecution's burden is heavy, but it does not require proof beyond all doubt.

## No. 4 — OTHER IMPORTANT TERMS

Before I turn to specific instructions on the offense charged in this case, I will explain some important terms.

### *Elements*

The offense charged consists of “elements,” which are the parts of the offense. The prosecution must prove beyond a reasonable doubt all of the elements of the offense for you to find the defendant guilty of that offense.

### *Timing*

The Indictment alleges an approximate date for the charged offense.

- The prosecution does not have to prove that the offense occurred on an exact date
- The prosecution only has to prove that the offense occurred at a time that was reasonably close to the date alleged for the offense in the Indictment.

### *Location*

You must decide whether the defendant’s conduct occurred in the Northern District of Iowa. Fort Dodge and Webster County are in the Northern District of Iowa.

### *Verdict Form*

A Verdict Form is attached to these Instructions.

- A Verdict Form is simply a written notice of your decision
- When you have reached a unanimous verdict, your foreperson will complete one copy of the Verdict Form by marking the appropriate blank or blanks for each question
- You will all sign that copy to indicate that you agree with the verdict and that it is unanimous
- Your foreperson will then bring the signed Verdict Form to the courtroom when it is time to announce your verdict

\* \* \*

I will now give you the “elements” instruction on the charged offense. The “Elements” of the charged offense are set out in **bold**.

## **No. 5 — ELEMENTS OF THE “BANK ROBBERY” OFFENSE**

The Indictment charges defendant Clayton with a “bank robbery” offense. The defendant denies that he committed this offense.

For you to find the defendant guilty of “bank robbery,” the prosecution must prove beyond a reasonable doubt *all* of the following elements against him:

***One*, on or about February 7, 2013, the defendant took money that was in the care or custody of Citizens State Bank (C.S. Bank) at 130 North 29th Street in Fort Dodge, Iowa.**

The prosecution alleges that the defendant took \$11,284 from C.S. Bank. The money was in the “care or custody” of C.S. Bank if

- It belonged to the bank, or
- It had been deposited with or entrusted to the bank, or
- It was in the control of the bank

***Two*, the defendant took the money from another person or in the presence of another person.**

The money was

- taken “from another person” if it was physically taken from another person
- taken “in the presence of another person,” if another person or persons were present in the bank, even if the money was not physically taken from any person

For this element to be proved, you must unanimously agree that the money was taken “from another person,” taken “in the presence of another person,” or both.

***Three, the defendant took the money by force and violence or by intimidation.***

For this element to be proved, you must unanimously agree that the money was taken “by force and violence,” taken “by intimidation,” or both.

- “Force and violence” includes use of a firearm or pointing a firearm at a person or use of physical force against a person
- “Intimidation” is conduct that would make an ordinary person reasonably fear bodily harm
  - Conduct of the defendant that reasonably suggested that he had a firearm and that, under the circumstances, reasonably suggested a threat of bodily harm is sufficient to find “intimidation”
  - Evidence that an individual felt intimidated is evidence that the defendant’s conduct was actually intimidating
  - The prosecution does not have to prove that the defendant intended to intimidate anyone or that anyone was actually intimidated or afraid

***Four*, at the time that the money was taken, the deposits of Citizens State Bank (C.S. Bank) were insured by the Federal Deposit Insurance Corporation (FDIC).**

If the prosecution *does not* prove all of these elements beyond a reasonable doubt, then you must find the defendant not guilty of “bank robbery,” as charged in the Indictment.

## No. 6 — DEFINITION OF EVIDENCE

Evidence is the following:

- testimony
- exhibits admitted into evidence, but exhibits are not necessarily more important than any other evidence, just because they are shown to you
- stipulations, which are agreements between the parties that certain facts are true; you must treat stipulated facts as having been proved

The following are not evidence:

- testimony that I tell you to disregard
- exhibits that are not admitted into evidence
- statements, arguments, questions, and comments by the lawyers
- objections and rulings on objections
- anything that you see or hear about this case outside the courtroom

You may have heard of “direct” or “circumstantial” evidence.

- “Direct” evidence is direct proof of a fact
  - An example is testimony by a witness about what that witness personally saw or heard or did
- “Circumstantial” evidence is proof of one or more facts from which you could find another fact

- An example is testimony that a witness personally saw a broken window and a brick on the floor, from which you could find that the brick broke the window
- You should consider both kinds of evidence, because the law makes no distinction in their weight
- The weight to be given any evidence, whether it is “direct” or “circumstantial,” is for you to decide

Some evidence may be admitted only for a limited purpose.

- I will tell you if that happens
- I will instruct you on the purposes for which the evidence can and cannot be used

## No. 7 — TESTIMONY OF WITNESSES

You may believe all of what any witness says, only part of it, or none of it.

In evaluating a witness's testimony, consider the following:

- the witness's
  - intelligence
  - memory
  - opportunity to have seen and heard what happened
  - motives for testifying
  - interest in the outcome of the case
  - manner while testifying
  - drug or alcohol use or addiction, if any
- the reasonableness of the witness's testimony
- any differences between what the witness says now and said earlier
- any inconsistencies between the witness's testimony and any other evidence that you believe
- whether any inconsistencies are the result of seeing or hearing things differently, actually forgetting things, or innocent mistakes or are, instead, the result of lies or phony memory lapses, and
- any other factors that you find bear on believability or credibility

You should not give any more or less weight to a witness's testimony just because the witness is one of the following:

- a public official or law enforcement officer
- an expert

You may give any witness's opinion whatever weight you think it deserves, but you should consider the following:

- the reasons and perceptions on which the opinion is based
- any reason that the witness may be biased, and
- all of the other evidence in the case

If the defendant testifies,

- you should judge his testimony in the same way that you judge the testimony of any other witness

You may hear evidence that a witness has been convicted of a crime. You may use that evidence

- only to help you decide whether or not to believe that witness, and
- how much weight to give that witness's testimony

You must consider the testimony of the following witnesses with greater caution and care:

- A witness testifying about participation in a charged crime

- A witness testifying pursuant to a plea agreement
  - Whether or not the witness’s testimony has been influenced by the plea agreement is for you to decide
  - The plea agreement may be a “cooperation” plea agreement that provides that the prosecution may recommend a less severe sentence if the prosecutor believes that the witness has provided “substantial assistance”
  - The court cannot reduce a sentence for “substantial assistance” unless the prosecution asks the court to do so, but if the prosecution does ask, the court decides if and how much to reduce the witness’s sentence

It is for you to decide

- What weight you think the testimony of such a witness deserves
- Whether or not such a witness’s testimony has been influenced by that witness’s desire to please the prosecutor or to strike a good bargain

Remember, it is your exclusive right to give any witness’s testimony whatever weight you think it deserves.

## **No. 8 — OBJECTIONS**

The lawyers may make objections and motions during the trial that I must rule upon.

- If I sustain an objection to a question before it is answered, do not draw any inferences or conclusions from the question itself
- Do not hold it against a lawyer or a party that a lawyer has made an objection, because lawyers have a duty to object to testimony or other evidence that they believe is not properly admissible

## **No. 9 — BENCH CONFERENCES**

During the trial, it may be necessary for me to talk with the lawyers out of your hearing.

- I may hold a bench conference while you are in the courtroom or call a recess
- These conferences are to decide how certain evidence is to be treated, to avoid confusion and error, and to save your valuable time, so please be patient
- We will do our best to keep such conferences short and infrequent

## No. 10 — NOTE-TAKING

You are allowed to take notes during the trial, if you want to.

- Be sure that your note-taking does not interfere with listening to and considering all the evidence
- Your notes are not necessarily more reliable than your memory or another juror's notes or memory
- Do not discuss your notes with anyone before you begin your deliberations
- Leave your notes on your chair during recesses and at the end of the day
- At the end of trial, you may take your notes with you or leave them to be destroyed
- No one else will ever be allowed to read your notes, unless you let them

If you choose not to take notes, remember that it is your own individual responsibility to listen carefully to the evidence.

An official court reporter is making a record of the trial, but her transcripts will not be available for your use during your deliberations.

## **No. 11 — CONDUCT OF JURORS DURING TRIAL**

You must decide this case *solely* on the evidence and your own observations, experiences, reason, common sense, and the law in these Instructions. You must also keep to yourself any information that you learn in court until it is time to discuss this case with your fellow jurors during deliberations.

To ensure fairness, you must obey the following rules:

- Do not talk among yourselves about this case, or about anyone involved with it, until you go to the jury room to decide on your verdict.
- Do not talk with anyone else about this case, or about anyone involved with it, until the trial is over.
- When you are outside the courtroom, do not let anyone ask you about or tell you anything about this case, anyone involved with it, any news story, rumor, or gossip about it, until the trial is over. If someone should try to talk to you about this case during the trial, please report it to me.
- During the trial, you should not talk to any of the parties, lawyers, or witnesses—even to pass the time of day—so that there is no reason to be suspicious about your fairness. The lawyers, parties, and witnesses are not supposed to talk to you, either.
- You may need to tell your family, friends, teachers, co-workers, or employer about your participation in this trial, so that you can tell

them when you must be in court and warn them not to ask you or talk to you about the case. However, do not provide any information to anyone by any means about this case until after I have accepted your verdict. That means do not talk face-to-face or use any electronic device or media, such as the telephone, a cell or smart phone, a Blackberry, a PDA, a computer, the Internet, any Internet service, any text or instant messaging service, any Internet chat room, any blog, or any website such as Facebook, MySpace, YouTube, or Twitter, to communicate to anyone any information about this case until I accept your verdict.

- Do not do any research—on the Internet, in libraries, in the newspapers, in dictionaries or other reference books, or in any other way—or make any investigation about this case, the law, or the people involved on your own.
- Do not visit or view any place discussed in this case and do not use Internet maps or Google Earth or any other program or device to search for or to view any place discussed in the testimony.
- Do not read any news stories or articles, in print, on the Internet, or in any “blog,” about this case, or about anyone involved with it, or listen to any radio or television reports about it or about anyone involved with it, or let anyone tell you anything about any such news reports. I assure you that when you have heard all the evidence, you will know more about this case than anyone will learn through the news media—and it will be more accurate.

- Do not make up your mind during the trial about what the verdict should be. Keep an open mind until you have had a chance to discuss the evidence with other jurors during deliberations.
- Do not decide the case based on “implicit biases.” As we discussed during jury selection, everyone, including me, has feelings, assumptions, perceptions, fears, and stereotypes, that is, “implicit biases,” that we may not be aware of. These hidden thoughts can impact what we see and hear, how we remember what we see and hear, and how we make important decisions. Because you are making very important decisions in this case, I strongly encourage you to evaluate the evidence carefully and to resist jumping to conclusions based on personal likes or dislikes, generalizations, gut feelings, prejudices, sympathies, stereotypes, or biases. The law demands that you return a just verdict, based solely on the evidence, your individual evaluation of that evidence, your reason and common sense, and these instructions. Our system of justice is counting on you to render a fair decision based on the evidence, not on biases.
- If, at any time during the trial, you have a problem that you would like to bring to my attention, or if you feel ill or need to go to the restroom, please send a note to the Court Security Officer (CSO), who will give it to me. I want you to be comfortable, so please do not hesitate to tell us about any problem.

I will read the remaining two Instructions at the end of the evidence.

## **No. 12 — DUTY TO DELIBERATE**

A verdict must represent the careful and impartial judgment of each of you. However, before you make that judgment, you must consult with one another and try to reach agreement, if you can do so consistent with your individual judgment.

- If you are convinced that the prosecution has not proved beyond a reasonable doubt that the defendant is guilty of the charged offense, say so
- If you are convinced that the prosecution has proved beyond a reasonable doubt that the defendant is guilty of the charged offense, say so
- Don't give up your honest beliefs just because others think differently or because you simply want to be finished with the case
- On the other hand, do not hesitate to re-examine your own views and to change your opinions, if you are convinced that they are wrong
- You can only reach a unanimous verdict if you discuss your views openly and frankly, with proper regard for the opinions of others, and with a willingness to re-examine your own views
- Remember that you are not advocates, but judges of the facts, so your sole interest is to seek the truth from the evidence
- The question is never who wins or loses the case, because society always wins, whatever your verdict, when you return a just verdict

based solely on the evidence, reason, your common sense, and these instructions

- You must consider all of the evidence bearing on each question before you
- Take all the time that you feel is necessary
- Remember that this case is important to the parties and to the fair administration of justice, so do not be in a hurry to reach a verdict just to be finished with the case

## No. 13 — DUTY DURING DELIBERATIONS

You must follow certain rules while conducting your deliberations and returning your verdict:

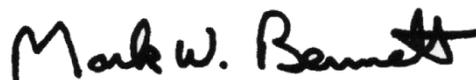
- Select a foreperson to preside over your discussions and to speak for you here in court.
- Do not consider punishment in any way in deciding whether the defendant is not guilty or guilty. If the defendant is guilty of the charged offense, I will decide what his sentence should be.
- Communicate with me by sending me a note through a Court Security Officer (CSO). The note must be signed by one or more of you. Remember that you should not tell anyone, including me, how your votes stand. I will respond as soon as possible, either in writing or orally in open court.
- Base your verdict solely on the evidence, reason, your common sense, and these instructions. Again, nothing I have said or done was intended to suggest what your verdict should be—that is entirely for you to decide.
- Reach your verdict without discrimination. In reaching your verdict, you must not consider the defendant's race, color, religious beliefs, national origin, or sex. You are not to return a verdict for or against the defendant unless you would return the same verdict without regard to his race, color, religious beliefs, national origin, or sex. To

emphasize the importance of this requirement, the verdict form contains a certification statement. Each of you should carefully read that statement, then sign your name in the appropriate place in the signature block, if the statement accurately reflects how you reached your verdict.

- Complete the Verdict Form. The foreperson must bring the signed Verdict Form to the courtroom when it is time to announce your verdict.
- When you have reached a verdict, the foreperson will advise the CSO that you are ready to return to the courtroom.

Good luck with your deliberations.

**DATED** this 10th day of February, 2014.



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MARK W. BENNETT  
U.S. DISTRICT COURT JUDGE  
NORTHERN DISTRICT OF IOWA

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

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MICHAEL CLAYTON,

Defendant.

No. CR 13-3022-MWB

**VERDICT FORM**

As to defendant Michael Clayton, we, the Jury, find as follows:

<b>THE “BANK ROBBERY” OFFENSE</b>		<b>VERDICT</b>
<b>Step 1:</b> Verdict	On the offense of “bank robbery,” as charged in the Indictment and explained in Instruction No. 5, please mark your verdict. <i>(If you find the defendant “not guilty,” do not consider Steps 2 and 3. Instead, please notify the Court Security Officer (CSO) that you have reached a verdict.)</i>	<input type="checkbox"/> Not Guilty  <input type="checkbox"/> Guilty
<b>Step 2:</b> Taken from or in the presence of another	<i>If you found the defendant “guilty” in Step 1, please indicate which one or more of the following you unanimously find occurred.</i>	
	<input type="checkbox"/> The money was taken from another person	
<b>Step 3:</b> By force and violence or by intimidation	<i>If you found the defendant “guilty” in Step 1, please indicate which one or more of the following you unanimously find occurred.</i>	
	<input type="checkbox"/> The money was taken by force and violence	
	<input type="checkbox"/> The money was taken by intimidation	

**CERTIFICATION**

By signing below, each juror certifies that consideration of the race, color, religious beliefs, national origin, or sex of the defendant was not involved in reaching his or her individual decision, and that the individual juror would have returned the same verdict for or against the defendant on the charged offenses regardless of the race, color, religious beliefs, national origin, or sex of the defendant.

\_\_\_\_\_  
Date

Foreperson	Juror
Juror	Juror

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

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MICHAEL CLAYTON,

Defendant.

No. CR 13-3022-MWB

**COURT’S PROPOSED  
INSTRUCTIONS  
TO THE JURY**

(02/06/14 “ANNOTATED”  
VERSION)

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**VERDICT FORM**

## No. 14 — INTRODUCTION<sup>1</sup>

Congratulations on your selection as a juror! These Instructions are to help you better understand the trial and your role in it.

In an Indictment, a Grand Jury has charged defendant Michael Clayton with “bank robbery.”<sup>2</sup> An Indictment is simply an accusation—it is not evidence of anything. The defendant has pled not guilty to the crime charged against him, and he is presumed absolutely not guilty of that offense, unless and until the prosecution proves his guilt on that offense beyond a reasonable doubt.

You must decide during your deliberations whether or not the prosecution has proved the defendant’s guilt on the offense charged beyond a reasonable doubt. In making your decision, you are the sole judges of the facts. You must not decide this case based on personal likes or dislikes, generalizations, gut feelings, prejudices, sympathies, stereotypes, or biases. The law demands that you return a just verdict, based solely on the evidence, your individual evaluation of that evidence, your reason and common sense, and these instructions. Do not take anything that I have said or done or that I may say or do as indicating what I think of the evidence or what I think your verdict should be.

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<sup>1</sup> Compare 8th Cir. Criminal Model 1.01 (2013).

<sup>2</sup> Like the prosecution, I do not find it necessary to explain more specifically here the “bank robbery” offense charged in the Superseding Indictment (docket no. 34). See Prosecution’s Proposed Jury Instruction No. 1 (docket no. 42). I note that “bank robbery” is also the description of an offense pursuant to 18 U.S.C. § 2113(a) in 8th Cir. Criminal Model 6.18.2113A (2013).

Remember, only defendant Michael Clayton, and not anyone else, is on trial. Also, the defendant is on trial only for the “bank robbery” offense charged against him in the Indictment, and not for anything else.

Please remember that this case is important to the parties and to the fair administration of justice. Therefore, please be patient, consider all of the evidence, and do not be in a hurry to reach a verdict just to be finished with the case.

## **No. 15 — PRESUMPTION OF INNOCENCE AND BURDEN OF PROOF<sup>3</sup>**

The presumption of innocence means that the defendant is presumed to be absolutely not guilty.

- This presumption means that you must put aside all suspicion that might arise from the defendant's arrest, the charge, or the fact that he is here in court
- This presumption remains with the defendant throughout the trial
- This presumption is enough, alone, for you to find the defendant not guilty, unless the prosecution proves, beyond a reasonable doubt, all of the elements of the offense charged against him

The burden is always on the prosecution to prove guilt beyond a reasonable doubt.

- This burden never, ever shifts to the defendant to prove his innocence
- This burden means that the defendant does not have to call any witnesses, produce any evidence, cross-examine the prosecution's witnesses, or testify
- This burden means that, if the defendant does not testify, you must not consider that fact in any way, or even discuss it, in arriving at your verdict

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<sup>3</sup> Compare 8th Cir. Criminal Model 3.05 (2013).

- This burden means that you must find the defendant not guilty of the offense charged against him, unless the prosecution proves beyond a reasonable doubt that he has committed each and every element of that offense

## No. 16 — REASONABLE DOUBT<sup>4</sup>

A reasonable doubt is a doubt based upon reason and common sense.

- A reasonable doubt may arise from evidence produced by the prosecution or the defendant, keeping in mind that the defendant never, ever has the burden or duty to call any witnesses or to produce any evidence
- A reasonable doubt may arise from the prosecution's lack of evidence

The prosecution must prove the defendant's guilt beyond a reasonable doubt.

- Proof beyond a reasonable doubt requires careful and impartial consideration of all of the evidence in the case before making a decision
- Proof beyond a reasonable doubt is proof so convincing that you would be willing to rely and act on it in the most important of your own affairs

The prosecution's burden is heavy, but it does not require proof beyond all doubt.

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<sup>4</sup> Compare 8th Cir. Criminal Model 3.11 (2013).

## No. 17 — OTHER IMPORTANT TERMS

Before I turn to specific instructions on the offense charged in this case, I will explain some important terms.

### *Elements*

The offense charged consists of “elements,” which are the parts of the offense. The prosecution must prove beyond a reasonable doubt all of the elements of the offense for you to find the defendant guilty of that offense.

### *Timing*

The Indictment alleges an approximate date for the charged offense.

- The prosecution does not have to prove that the offense occurred on an exact date
- The prosecution only has to prove that the offense occurred at a time that was reasonably close to the date alleged for the offense in the Indictment.

### *Location*

You must decide whether the defendant’s conduct occurred in the Northern District of Iowa. Fort Dodge and Webster County are in the Northern District of Iowa.

### *Verdict Form*

A Verdict Form is attached to these Instructions.

- A Verdict Form is simply a written notice of your decision
- When you have reached a unanimous verdict, your foreperson will complete one copy of the Verdict Form by marking the appropriate blank or blanks for each question
- You will all sign that copy to indicate that you agree with the verdict and that it is unanimous
- Your foreperson will then bring the signed Verdict Form to the courtroom when it is time to announce your verdict

\* \* \*

I will now give you the “elements” instruction on the charged offense. The “Elements” of the charged offense are set out in **bold**.

**No. 18 — ELEMENTS OF THE “BANK  
ROBBERY” OFFENSE<sup>5</sup>**

The Indictment charges defendant Clayton with a “bank robbery” offense. The defendant denies that he committed this offense.

For you to find the defendant guilty of “bank robbery,” the prosecution must prove beyond a reasonable doubt *all* of the following elements against him:<sup>6</sup>

***One, on or about February 7, 2013, the defendant took money that was in the care or custody of Citizens State Bank (C.S. Bank) at 130 North 29th Street in Fort Dodge, Iowa.***<sup>7</sup>

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<sup>5</sup> See 18 U.S.C. § 2113(a); Superseding Indictment (docket no. 34); 8th Cir. Criminal Model 6.18.2113A. Although the prosecution submitted Proposed Jury Instructions (docket no. 42), the defendant did not submit any Proposed Jury Instructions or respond to the prosecution’s Proposed Jury Instructions.

<sup>6</sup> Compare 8th Cir. Criminal Model 6.18.2113A; Prosecution’s Proposed Jury Instructions No. 5. I note that the model instruction and the prosecution’s Proposed Jury Instruction both combine at least three separate requirements into a single first element: taking, from the presence of another, money that was in the care or custody of the bank. Compare *United States v. Moe*, 536 F.3d 825, 833 (8th Cir. 2008) (“To prove [a defendant] violated the robbery statute, the government was required to prove the following elements: (1) [the defendant] took, or attempted to take, (2) by force and violence, or by intimidation, (3) money or any other thing of value belonging to a state or federally chartered credit union, (4) from the person or presence of another.” (citing 18 U.S.C. § 2113(a)); with *United States v. Brooks*, 715 F.3d 1069, 1081 (8th Cir. 2013) (stating only 2 elements of the offense: “(1) that [the defendant] took money from the credit union “by force and violence, or by intimidation” and that (2) the credit union was federally insured.” (citing *United States v. Pickar*, 616 F.3d 821, 825 (8th Cir. 2010)). I prefer to separate at least some of these requirements into separate elements.

<sup>7</sup> This element addresses the taking of money that was in the care or custody of the bank. See *Moe*, 536 F.3d at 833 (first and third elements). Although the Superseding

The prosecution alleges that the defendant took \$11,284 from C.S. Bank. The money was in the “care or custody” of C.S. Bank if<sup>8</sup>

- It belonged to the bank,<sup>9</sup> or
- It had been deposited with or entrusted to the bank,<sup>10</sup> or

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Indictment lists “care, custody, management, and possession,” the prosecution has trimmed the list to just “care or custody” in Proposed Jury Instruction No. 5. *The defendant has specifically requested the expanded explanation of “care or custody” that I set out in brackets in the prior version, so I have included it.*

<sup>8</sup> See, e.g., *United States v. Pamir*, No. 92-06005-02-CR-SJ-6, 1993 WL 20223, \*5 (W.D. Mo. Jan. 27, 1993) (“A review of the cases which have interpreted 18 U.S.C. § 2113 reflects that cases where stolen items are found to be within the care, custody and control of banks generally fall into one of three categories: (1) cases where the funds are taken from inside a bank in an area in which the bank had an ability to exercise control, such as the contents of safety deposit boxes or papers from the desk of an employee; (2) cases involving the taking of funds which belonged to or were the bank’s monies; and (3) cases involving bank funds in the possession of a bailee such as an armored car or a bank messenger.” (footnotes omitted)).

<sup>9</sup> See, e.g., *United States v. King*, 178 F.3d 1376, 1378 (11th Cir. 1999) (considering whether the bank had “legal title” to the money, even though it was in the possession of an armored car company); *United States v. Mafnas*, 701 F.2d 83, 85 (9th Cir. 1983) (“Case law is clear that since what was taken was property belonging to the banks, it was property or money ‘in the care, custody, control, management, or possession of any bank’ within the meaning of 18 U.S.C. § 2113(b), notwithstanding the fact that it may have been in the possession of an armored car service serving as a bailee for hire.” (citations omitted)).

<sup>10</sup> See *United States v. Lankford*, 573 F.3d 1051, 1053 (8th Cir. 1978) (“Whether the bank obtains title to the tendered deposits is not here material. At a minimum the tendered deposits in the night depository are in the care, custody and control of the bank.” (citing *United States v. Dix*, 491 F.2d 225, 226-27 (9th Cir. 1974))).

- It was in the control of the bank

**Two, the defendant took the money from another person or in the presence of another person.<sup>11</sup>**

The money was

- taken “from another person” if it was physically taken from another person
- taken “in the presence of another person,” if another person or persons were present in the bank, even if the money was not physically taken from any person<sup>12</sup>

For this element to be proved, you must unanimously agree that the money was taken “from another person,” taken “in the presence of another person,” or both.

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<sup>11</sup> This element addresses the taking of the money from the “person or presence of another.” *See Moe*, 536 F.3d at 833 (first and fourth elements); *compare United States v. Sullivan*, 431 F.3d 976, 982 (6th Cir. 2005) (“To sustain a conviction under 18 U.S.C. § 2113(a), the jury was required to find that [Bell] intentionally took money *from another person*, that the money was then in possession of a federally insured bank or credit union, and that [Bell] took the money by force, violence, or intimidation.” (emphasis added)). *Again, the defendant has specifically requested the expanded explanations of “from another person” and “in the presence of another person” that I set out in brackets in the prior version, so I have included them.*

<sup>12</sup> *See* 8th Cir. Criminal Model 6.18.2113A, n.1 (“In certain fact situations the money may be taken from the presence of literally everyone in the bank, for example, when the defendant has everyone including the bank employees lie face [down] on the floor in the middle of the bank while he enters all the tellers’ drawers.”).

**Three, the defendant took the money by force and violence or by intimidation.**<sup>13</sup>

For this element to be proved, you must unanimously agree that the money was taken “by force and violence,” taken “by intimidation,” or both.

- “Force and violence” includes use of a firearm or pointing a firearm at a person<sup>14</sup> or use of physical force against a person
- “Intimidation” is conduct that would make an ordinary person reasonably fear bodily harm<sup>15</sup>

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<sup>13</sup> This element addresses the taking of the money by “force and violence” or by “intimidation.” *See Moe*, 536 F.3d at 833 (first and second elements). “Force and violence” and “intimidation” are understood to be alternatives, and require *actual* “force and violence” and *actual* “intimidation,” not merely *attempted* use of “force and violence” or an *attempt* to “intimidate.” *See United States v. Brown*, 412 F.2d 381, 383 & n.4 (8th Cir. 1969) (“[W]hat is involved in this indictment is an attempted taking by intimidation, the means being intimidation, or putting in fear instead of by force.”); *see also United States v. Thornton*, 539 F.3d 741, 747 (7th Cir. 2008) (so reading *Brown* and concluding that “attempt” relates to the “taking,” not to the use of “force and violence” or “intimidation”); *United States v. Bellew*, 369 F.3d 450, 453 (5th Cir. 2004) (stating, “The requirement of a taking “by force and violence, or by intimidation” under section 2113(a) is disjunctive. The government must prove only “force and violence” or “intimidation” to establish its case,” (quoting *United States v. Higdon*, 832 F.2d 312, 314 (5th Cir. 1987)), and explaining that where only “intimidation” was alleged, that was the only alternative submitted to the jury).

<sup>14</sup> *United States v. Pravato*, 505 F.2d 703, 704-05 (2d Cir. 1974) (suggesting that use of a gun was “ample” evidence of “force” and “pointing the gun at employees” was “ample” evidence of “violence”).

<sup>15</sup> *See United States v. Pickar*, 616 F.3d 821, 826 (8th Cir. 2010) (approving an instruction on “intimidation”); *United States v. Gipson*, 383 F.3d 689, 699 (8th Cir.

- Conduct of the defendant that reasonably suggested that he had a firearm and that, under the circumstances, reasonably suggested a threat of bodily harm is sufficient to find “intimidation”<sup>16</sup>
- Evidence that an individual felt intimidated is evidence that the defendant’s conduct was actually intimidating<sup>17</sup>
- The prosecution does not have to prove that the defendant intended to intimidate anyone or that anyone was actually intimidated or afraid<sup>18</sup>

***Four, at the time that the money was taken, the deposits of Citizens State Bank (C.S. Bank) were insured by the Federal Deposit Insurance Corporation (FDIC).***<sup>19</sup>

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2004); *United States v. Yockel*, 320 F.3d 818, 824 (8th Cir.), *cert. denied*, 540 U.S. 839 (2003).

<sup>16</sup> *Pickar*, 616 F.3d at 826 (citing *United States v. Johnston*, 543 F.2d 55, 56 (8th Cir. 1976)).

<sup>17</sup> *See Pickar*, 616 F.3d at 825.

<sup>18</sup> *See Pickar*, 616 F.3d at 825-26 (stating requirements and approving a jury instruction).

<sup>19</sup> This element addresses the federal insurance element. *See Moe*, 536 F.3d at 833 (third element); *Brooks*, 715 F.3d at 1081 (second element).

If the prosecution *does not* prove all of these elements beyond a reasonable doubt, then you must find the defendant not guilty of “bank robbery,” as charged in the Indictment.

## No. 19 — DEFINITION OF EVIDENCE<sup>20</sup>

Evidence is the following:

- testimony
- exhibits admitted into evidence, but exhibits are not necessarily more important than any other evidence, just because they are shown to you
- stipulations, which are agreements between the parties that certain facts are true; you must treat stipulated facts as having been proved

The following are not evidence:

- testimony that I tell you to disregard
- exhibits that are not admitted into evidence
- statements, arguments, questions, and comments by the lawyers
- objections and rulings on objections
- anything that you see or hear about this case outside the courtroom

You may have heard of “direct” or “circumstantial” evidence.

- “Direct” evidence is direct proof of a fact
  - An example is testimony by a witness about what that witness personally saw or heard or did

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<sup>20</sup> My “plain language” jury instructions. See 8th Cir. Criminal Model 1.03 (2013).

- “Circumstantial” evidence is proof of one or more facts from which you could find another fact
  - An example is testimony that a witness personally saw a broken window and a brick on the floor, from which you could find that the brick broke the window
- You should consider both kinds of evidence, because the law makes no distinction in their weight
- The weight to be given any evidence, whether it is “direct” or “circumstantial,” is for you to decide<sup>21</sup>

Some evidence may be admitted only for a limited purpose.

- I will tell you if that happens
- I will instruct you on the purposes for which the evidence can and cannot be used

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<sup>21</sup> See 8th Cir. Civil Model 1.03 (2013) (last paragraph, modified) and 9th Cir. Criminal Model 1.9 (modified); *but see* 8th Cir. Criminal Model 1.04 (2013) (suggesting that definitions of direct and circumstantial evidence are ordinarily not required).

## No. 20 — TESTIMONY OF WITNESSES<sup>22</sup>

You may believe all of what any witness says, only part of it, or none of it. In evaluating a witness's testimony, consider the following:

- the witness's
  - intelligence
  - memory
  - opportunity to have seen and heard what happened
  - motives for testifying
  - interest in the outcome of the case
  - manner while testifying
  - drug or alcohol use or addiction, if any
- the reasonableness of the witness's testimony
- any differences between what the witness says now and said earlier
- any inconsistencies between the witness's testimony and any other evidence that you believe
- whether any inconsistencies are the result of seeing or hearing things differently, actually forgetting things, or innocent mistakes or are, instead, the result of lies or phony memory lapses, and
- any other factors that you find bear on believability or credibility

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<sup>22</sup> My "stock" jury instructions. See 8th Cir. Criminal Models 1.05 and 3.04 (2013).

You should not give any more or less weight to a witness's testimony just because the witness is one of the following:

- a public official or law enforcement officer
- an expert

You may give any witness's opinion whatever weight you think it deserves, but you should consider the following:

- the reasons and perceptions on which the opinion is based
- any reason that the witness may be biased, and
- all of the other evidence in the case

If the defendant testifies,

- you should judge his testimony in the same way that you judge the testimony of any other witness

You may hear evidence that a witness has been convicted of a crime. You may use that evidence

- only to help you decide whether or not to believe that witness, and
- how much weight to give that witness's testimony

You must consider the testimony of the following witnesses with greater caution and care:<sup>23</sup>

- A witness testifying about participation in a charged crime
- A witness testifying pursuant to a plea agreement
  - Whether or not the witness’s testimony has been influenced by the plea agreement is for you to decide
  - The plea agreement may be a “cooperation” plea agreement that provides that the prosecution may recommend a less severe sentence if the prosecutor believes that the witness has provided “substantial assistance”
  - The court cannot reduce a sentence for “substantial assistance” unless the prosecution asks the court to do so, but if the prosecution does ask, the court decides if and how much to reduce the witness’s sentence

It is for you to decide

- What weight you think the testimony of such a witness deserves
- Whether or not such a witness’s testimony has been influenced by that witness’s desire to please the prosecutor or to strike a good bargain

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<sup>23</sup> The prosecution proposed, and the defendant did not object to, a “greater caution and care” instruction for witnesses who participated in a charged crime and witnesses testifying pursuant to a plea agreements. *See* 8th Cir. Criminal Model 2.19 (2013); 8th Cir. Criminal Model 4.05B.

Remember, it is your exclusive right to give any witness's testimony whatever weight you think it deserves.

## No. 21 — OBJECTIONS<sup>24</sup>

The lawyers may make objections and motions during the trial that I must rule upon.

- If I sustain an objection to a question before it is answered, do not draw any inferences or conclusions from the question itself
- Do not hold it against a lawyer or a party that a lawyer has made an objection, because lawyers have a duty to object to testimony or other evidence that they believe is not properly admissible

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<sup>24</sup> My “stock” jury instructions. *See* 8th Cir. Criminal Model 1.03, numbered ¶ 2 (2013).

## No. 22 — BENCH CONFERENCES<sup>25</sup>

During the trial, it may be necessary for me to talk with the lawyers out of your hearing.

- I may hold a bench conference while you are in the courtroom or call a recess
- These conferences are to decide how certain evidence is to be treated, to avoid confusion and error, and to save your valuable time, so please be patient
- We will do our best to keep such conferences short and infrequent

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<sup>25</sup> My “stock” jury instructions. *See* 8th Cir. Criminal Model 1.07 (2013).

## No. 23 — NOTE-TAKING<sup>26</sup>

You are allowed to take notes during the trial, if you want to.

- Be sure that your note-taking does not interfere with listening to and considering all the evidence
- Your notes are not necessarily more reliable than your memory or another juror's notes or memory
- Do not discuss your notes with anyone before you begin your deliberations
- Leave your notes on your chair during recesses and at the end of the day
- At the end of trial, you may take your notes with you or leave them to be destroyed
- No one else will ever be allowed to read your notes, unless you let them

If you choose not to take notes, remember that it is your own individual responsibility to listen carefully to the evidence.

An official court reporter is making a record of the trial, but her transcripts will not be available for your use during your deliberations.

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<sup>26</sup> My “stock” jury instructions. *See* 8th Cir. Criminal Model 1.06A (2013).

**No. 24 — CONDUCT OF JURORS DURING  
TRIAL<sup>27</sup>**

You must decide this case *solely* on the evidence and your own observations, experiences, reason, common sense, and the law in these Instructions. You must also keep to yourself any information that you learn in court until it is time to discuss this case with your fellow jurors during deliberations.

To ensure fairness, you must obey the following rules:

- Do not talk among yourselves about this case, or about anyone involved with it, until you go to the jury room to decide on your verdict.
- Do not talk with anyone else about this case, or about anyone involved with it, until the trial is over.
- When you are outside the courtroom, do not let anyone ask you about or tell you anything about this case, anyone involved with it, any news story, rumor, or gossip about it, until the trial is over. If someone should try to talk to you about this case during the trial, please report it to me.
- During the trial, you should not talk to any of the parties, lawyers, or witnesses—even to pass the time of day—so that there is no reason to be suspicious about your fairness. The lawyers, parties, and witnesses are not supposed to talk to you, either.

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<sup>27</sup> My “stock” jury instructions. See 8th Cir. Criminal Model 1.08 (2013).

- You may need to tell your family, friends, teachers, co-workers, or employer about your participation in this trial, so that you can tell them when you must be in court and warn them not to ask you or talk to you about the case. However, do not provide any information to anyone by any means about this case until after I have accepted your verdict. That means do not talk face-to-face or use any electronic device or media, such as the telephone, a cell or smart phone, a Blackberry, a PDA, a computer, the Internet, any Internet service, any text or instant messaging service, any Internet chat room, any blog, or any website such as Facebook, MySpace, YouTube, or Twitter, to communicate to anyone any information about this case until I accept your verdict.
- Do not do any research—on the Internet, in libraries, in the newspapers, in dictionaries or other reference books, or in any other way—or make any investigation about this case, the law, or the people involved on your own.
- Do not visit or view any place discussed in this case and do not use Internet maps or Google Earth or any other program or device to search for or to view any place discussed in the testimony.
- Do not read any news stories or articles, in print, on the Internet, or in any “blog,” about this case, or about anyone involved with it, or listen to any radio or television reports about it or about anyone involved with it, or let anyone tell you anything about any such news reports. I assure you that when you have heard all the evidence, you

will know more about this case than anyone will learn through the news media—and it will be more accurate.

- Do not make up your mind during the trial about what the verdict should be. Keep an open mind until you have had a chance to discuss the evidence with other jurors during deliberations.
- Do not decide the case based on “implicit biases.” As we discussed during jury selection, everyone, including me, has feelings, assumptions, perceptions, fears, and stereotypes, that is, “implicit biases,” that we may not be aware of. These hidden thoughts can impact what we see and hear, how we remember what we see and hear, and how we make important decisions. Because you are making very important decisions in this case, I strongly encourage you to evaluate the evidence carefully and to resist jumping to conclusions based on personal likes or dislikes, generalizations, gut feelings, prejudices, sympathies, stereotypes, or biases. The law demands that you return a just verdict, based solely on the evidence, your individual evaluation of that evidence, your reason and common sense, and these instructions. Our system of justice is counting on you to render a fair decision based on the evidence, not on biases.<sup>28</sup>
- If, at any time during the trial, you have a problem that you would like to bring to my attention, or if you feel ill or need to go to the restroom, please send a note to the Court Security Officer (CSO), who

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<sup>28</sup> My “stock” instruction on “implicit bias.”

will give it to me. I want you to be comfortable, so please do not hesitate to tell us about any problem.

I will read the remaining two Instructions at the end of the evidence.

## No. 25 — DUTY TO DELIBERATE<sup>29</sup>

A verdict must represent the careful and impartial judgment of each of you. However, before you make that judgment, you must consult with one another and try to reach agreement, if you can do so consistent with your individual judgment.

- If you are convinced that the prosecution has not proved beyond a reasonable doubt that the defendant is guilty of the charged offense, say so
- If you are convinced that the prosecution has proved beyond a reasonable doubt that the defendant is guilty of the charged offense, say so
- Don't give up your honest beliefs just because others think differently or because you simply want to be finished with the case
- On the other hand, do not hesitate to re-examine your own views and to change your opinions, if you are convinced that they are wrong
- You can only reach a unanimous verdict if you discuss your views openly and frankly, with proper regard for the opinions of others, and with a willingness to re-examine your own views
- Remember that you are not advocates, but judges of the facts, so your sole interest is to seek the truth from the evidence
- The question is never who wins or loses the case, because society always wins, whatever your verdict, when you return a just verdict

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<sup>29</sup> My “stock” jury instructions. *See* 8th Cir. Criminal Model 3.12 (2013).

based solely on the evidence, reason, your common sense, and these instructions

- You must consider all of the evidence bearing on each question before you
- Take all the time that you feel is necessary
- Remember that this case is important to the parties and to the fair administration of justice, so do not be in a hurry to reach a verdict just to be finished with the case

## No. 26 — DUTY DURING DELIBERATIONS<sup>30</sup>

You must follow certain rules while conducting your deliberations and returning your verdict:

- Select a foreperson to preside over your discussions and to speak for you here in court.
- Do not consider punishment in any way in deciding whether the defendant is not guilty or guilty. If the defendant is guilty of the charged offense, I will decide what his sentence should be.
- Communicate with me by sending me a note through a Court Security Officer (CSO). The note must be signed by one or more of you. Remember that you should not tell anyone, including me, how your votes stand. I will respond as soon as possible, either in writing or orally in open court.
- Base your verdict solely on the evidence, reason, your common sense, and these instructions. Again, nothing I have said or done was intended to suggest what your verdict should be—that is entirely for you to decide.
- Reach your verdict without discrimination. In reaching your verdict, you must not consider the defendant’s race, color, religious beliefs, national origin, or sex. You are not to return a verdict for or against the defendant unless you would return the same verdict without regard

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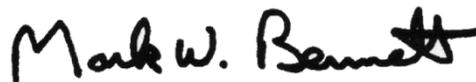
<sup>30</sup> My “stock” jury instructions. *See* 8th Cir. Criminal Model 3.12 (2013).

to his race, color, religious beliefs, national origin, or sex. To emphasize the importance of this requirement, the verdict form contains a certification statement. Each of you should carefully read that statement, then sign your name in the appropriate place in the signature block, if the statement accurately reflects how you reached your verdict.

- Complete the Verdict Form. The foreperson must bring the signed Verdict Form to the courtroom when it is time to announce your verdict.
- When you have reached a verdict, the foreperson will advise the CSO that you are ready to return to the courtroom.

Good luck with your deliberations.

**DATED** this 10th day of February, 2014.



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MARK W. BENNETT  
U.S. DISTRICT COURT JUDGE  
NORTHERN DISTRICT OF IOWA

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

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MICHAEL CLAYTON,

Defendant.

No. CR 13-3022-MWB

**COURT’S PROPOSED  
VERDICT FORM  
(02/06/14 VERSION)**

As to defendant Michael Clayton, we, the Jury, find as follows:

<b>THE “BANK ROBBERY” OFFENSE</b>		<b>VERDICT</b>
<b>Step 1:</b> Verdict	On the offense of “bank robbery,” as charged in the Indictment and explained in Instruction No. 5, please mark your verdict. <i>(If you find the defendant “not guilty,” do not consider Steps 2 and 3. Instead, please notify the Court Security Officer (CSO) that you have reached a verdict.)</i>	<input type="checkbox"/> Not Guilty  <input type="checkbox"/> Guilty
<b>Step 2:</b> Taken from or in the presence of another	<i>If you found the defendant “guilty” in Step 1, please indicate which one or more of the following you unanimously find occurred.</i>	
	<input type="checkbox"/> The money was taken from another person	
<b>Step 3:</b> By force and violence or by intimidation	<i>If you found the defendant “guilty” in Step 1, please indicate which one or more of the following you unanimously find occurred.</i>	
	<input type="checkbox"/> The money was taken by force and violence	
	<input type="checkbox"/> The money was taken by intimidation	

**CERTIFICATION**

By signing below, each juror certifies that consideration of the race, color, religious beliefs, national origin, or sex of the defendant was not involved in reaching his or her individual decision, and that the individual juror would have returned the same verdict for or against the defendant on the charged offenses regardless of the race, color, religious beliefs, national origin, or sex of the defendant.

\_\_\_\_\_  
Date

Foreperson	Juror
Juror	Juror