

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

UNITED STATES OF AMERICA

v.

CR No. 11-058 ML

EVGUENI TETIOUKHINE, a/k/a
JOHN DOE

JURY INSTRUCTIONS

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PART I: GENERAL INSTRUCTIONS

1. INTRODUCTION

Members of the jury, we have now come to the end of this trial. This case, like all criminal cases, is a serious one. I say this because the defendant and the United States have a deep concern for your mature consideration of the evidence as presented and the law which I am about to give you.

Although you as the jury are the sole judges of the facts, you are duty bound to follow the law as I instruct you, and to apply that law to the facts as you find them to be from the evidence which has been presented during this trial. You are not to single out any one instruction as stating the law. Rather, you must consider these instructions in their entirety. You are not to be concerned with the wisdom of any rule of law, regardless of any opinion which you might have as to what the law ought to be. It would be a violation of your sworn duty to base your verdict upon any version of the law other than that which I am about to give to you.

You have been chosen and sworn as jurors in this case to try the issues of fact presented by the allegations of the indictment and the denial made by the “not guilty” plea of the defendant. You are to perform this duty without bias or prejudice as to any party. The law does not permit jurors to be governed by sympathy, prejudice, or public opinion. The accused and the government are entitled to an impartial consideration of all the evidence. Moreover, the parties and the public expect that you will carefully and impartially consider all the evidence in the case, follow the law as stated by the Court, and reach a just verdict, regardless of the consequences.

The fact that the prosecution is brought in the name of the United States of America entitles the government to no greater consideration than that accorded to any other party to a litigation. By the same token, it is entitled to no less consideration. All parties, whether government or

individuals, stand as equals at the bar of justice.

2. FUNCTION OF A JURY

Ladies and gentlemen, you are the trier of facts; you alone must determine what the facts are in this particular case. My function and duty is to instruct you on the law that applies to this case. It is your duty to accept the law as I give it to you—whether or not you agree with it—and to apply that law to the facts as you find them.

3. EVIDENCE RECEIVED IN THIS CASE

For the purpose of determining whether or not the government has sustained its burden of proof, you must evaluate all of the evidence. The evidence in this case consists of the sworn testimony of the witnesses and all exhibits received in evidence.

Any proposed testimony or proposed exhibit to which an objection was sustained by the Court, as well as any testimony ordered stricken by the Court, must be entirely disregarded.

Anything you may have seen or heard outside the courtroom is not proper evidence and must be entirely disregarded.

4. INFERENCES—DEFINED

In determining whether the government has sustained its burden of proof, you are to consider only the evidence. But in your consideration of the evidence, you are not limited to the statements of witnesses, or solely to what you see and hear as the witnesses testify. You are permitted to draw, from the facts which you find have been proven, such reasonable inferences as seem justified in light

of your experiences.

Inferences are deductions or conclusions which reason and common sense lead you to draw from facts which have been established by the evidence in the case.

5. EVIDENCE—DIRECT AND CIRCUMSTANTIAL

There are, generally speaking, two types of evidence. One is direct evidence, such as the testimony of an eyewitness. The other is indirect or circumstantial evidence, which is a chain of circumstances pointing to certain facts.

The law makes no distinction at all between the weight to be given to either direct or circumstantial evidence. Nor is a greater degree of certainty required of circumstantial evidence than of direct evidence. In determining whether the government has sustained its burden of proof you can and should weigh all the evidence, both direct and circumstantial.

6. OBJECTIONS AND WEIGHT OF THE EVIDENCE

The fact that the Court may have admitted evidence over objection should not influence you in determining the weight that you will give such evidence. Nor should statements made by counsel, either for or against the admission of offered evidence, influence your determination of the weight that you will give the evidence if admitted. In other words, you should determine the weight that you will give such evidence on the basis of your own consideration of it and without regard to the statements of counsel concerning the admissibility of such evidence.

7. JURY'S RECOLLECTION CONTROLS

If any reference by the Court or by counsel to matters of evidence does not coincide with your own recollection, it is your recollection which should control during your deliberations.

8. PRESUMPTION OF INNOCENCE

In all criminal cases, there is a presumption of innocence. Every defendant under our system of law is presumed to be innocent of the accusation which is filed against him or her, and this presumption of innocence must remain with the defendant from the moment the charge is brought, throughout the trial, through the arguments of counsel, throughout the instructions of the Court, and throughout your deliberations when you retire to consider your verdict in the secrecy of the jury room.

The presumption of innocence remains unless and until you find that the defendant is guilty beyond a reasonable doubt of a charge as stated in the indictment. If you find, however, that the defendant is guilty beyond a reasonable doubt of each and every element of the crime with which he is charged, the presumption of innocence disappears and is of no further avail to him.

9. BURDEN OF PROOF

In criminal cases, the law places the burden of proof upon the government. The government has the burden of proving each and every element of the offense as charged beyond a reasonable doubt.

What is meant by the term "beyond a reasonable doubt?" Obviously, the obligation resting upon the government to prove a defendant's guilt beyond a reasonable doubt does not mean that it

must do so beyond all conceivable doubts. Nor does it require the government to prove a defendant's guilt to a mathematical or scientific certainty. Reasonable doubt means that the government must adduce evidence which, on examination, is found to be so convincing and compelling as to leave in your minds no reasonable doubt about the defendant's guilt. We know from experience what a doubt is, just as we know when something is reasonable or unreasonable. Reasonable doubt by definition means a doubt founded upon reason and not speculation, that is, a doubt for which you can give some reason.

If, therefore, after reviewing all the evidence, there remains in your mind a doubt about the defendant's guilt, and this doubt appears in the light of the evidence to be reasonable, your duty is to find the defendant not guilty. If, however, at the end of your deliberations, you are convinced by the evidence beyond a reasonable doubt that the defendant is guilty, your duty would be to return a verdict against him.

10. CONSIDER EACH CHARGE SEPARATELY

The indictment in this case contains eight counts or "charges." You should consider each charge and the evidence pertaining to it separately. The fact that you may find the defendant guilty or not guilty as to one of the offenses charged should not control your verdict as to the other offenses charged.

PART II: THE OFFENSES CHARGED

11. UNDERSTANDING THE INDICTMENT

This is a criminal trial upon an indictment returned by a federal grand jury against the defendant, Evgueni Tetiouxhine. An indictment is nothing more than an accusation. It is a piece of paper filed with the Court to bring a criminal charge against a defendant. Here, the defendant has pled not guilty. The government therefore has the burden of proving the allegations made against him.

The fact that an indictment has been filed in this case does not give rise to a presumption of guilt. It does not even lead to an inference of guilt. The indictment simply brings this matter before you for determination. Beyond that, it has no significance whatsoever.

12. “ON OR ABOUT”- DEFINED

You will note that the indictment charges that the offenses were committed “on or about” a certain date. The proof need not establish with certainty the exact date of the alleged offense. It is sufficient that the evidence in the case establishes beyond a reasonable doubt that the offense was committed on a date reasonably near the date alleged in the indictment.

13. COUNT ONE – WIRE FRAUD

Count 1 of the indictment charges that:

“On or about February 21, 2007, in the District of Rhode Island, defendant . . . for the purpose of executing the . . . scheme and artifice to defraud and for obtaining money and property by means of false and fraudulent pretenses, representations and promises, and attempting to do so, did

knowingly transmit and cause to be transmitted by wire communication in interstate commerce writings, signs, signals, and pictures, that is, an internet transmission of information from a Uniform Residential Loan Application to Salem Five Mortgage Company,” in violation of 18 U.S.C. § 1343.

14. 18 U.S.C. § 1343 – WIRE FRAUD

Section 1343 of Title 18 of the United States Code provides in relevant part:

“Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, transmits or causes to be transmitted by means of wire. . . communication in interstate . . . commerce, any writings, signs, signals, pictures, or sounds for the purpose of executing such scheme or artifice” is guilty of a crime against the United States.

15. 18 U.S.C. § 1343 – ESSENTIAL ELEMENTS

For you to find the defendant guilty of wire fraud, you must be convinced that the government has proven each of the following four elements beyond a reasonable doubt:

First, that there was a scheme, substantially as charged in the indictment, to defraud or to obtain money or property by means of false or fraudulent pretenses;

Second, that the scheme to defraud involved the misrepresentation or concealment of a material fact or matter or the scheme to obtain money or property by means of false or fraudulent pretenses involved a false statement, assertion, half-truth or knowing concealment concerning a material fact or matter;

Third, that the defendant knowingly and willfully participated in this scheme with the intent

to defraud; and

Fourth, that the defendant caused an interstate wire communication to be used, on or about the date alleged, in furtherance of this scheme, or that its use was a necessary foreseeable part of the scheme.

16. “SCHEME”- DEFINED

A scheme includes any plan, pattern or course of action. It is not necessary that the government prove all the details alleged in the indictment concerning the precise nature and purpose of the scheme or that the alleged scheme actually succeeded in defrauding anyone. But the government must prove beyond a reasonable doubt that the scheme was substantially as charged in the indictment.

17. “DEFRAUD” – DEFINED

The term “defraud” means to deceive another in order to obtain money or property.

18. “FALSE OR FRAUDULENT PRETENSES”- DEFINED

The term “false or fraudulent pretenses” means any false statements or assertions that were either known to be untrue when made or were made with reckless indifference to their truth and that were made with the intent to defraud. The term includes actual, direct false statements as well as half-truths and the knowing concealment of facts.

19. “MATERIAL”- DEFINED

A “material” fact or matter is one that has a natural tendency to influence or be capable of influencing the decision of the decision maker to whom it was addressed.

20. INTENT OR KNOWLEDGE

Intent or knowledge may not ordinarily be proven directly because there is no way of directly scrutinizing the workings of the human mind. In determining what the defendant knew or intended at a particular time, you may consider any statements made or acts done or omitted by the defendant and all other facts and circumstances received in evidence that may aid in your determination of the defendant’s knowledge or intent. You may infer, but you certainly are not required to infer, that a person intends the natural and probable consequences of acts knowingly done or knowingly omitted. It is entirely up to you, however, to decide what facts are proven by the evidence received during this trial.

21. “WILLFUL BLINDNESS” AS A WAY OF SATISFYING “KNOWINGLY”

In deciding whether defendant acted knowingly, you may infer that defendant had knowledge of a fact if you find that he deliberately closed his eyes to a fact that otherwise would have been obvious to him. In order to infer knowledge, you must find that two things have been established. First, that defendant was aware of a high probability of the fact in question. Second, that defendant consciously and deliberately avoided learning of that fact. That is to say, defendant willfully made himself blind to that fact. It is entirely up to you to determine whether he deliberately closed his eyes to the fact and, if so, what inference, if any, should be drawn. However, it is important to bear in mind

that mere negligence or mistake in failing to learn the fact is not sufficient. There must be a deliberate effort to remain ignorant of the fact.

22. “INTERSTATE WIRE COMMUNICATION”- DEFINED

An “interstate wire communication” includes an email transmission or other internet communication. The wire communication does not itself have to be essential to the scheme, but it must have been made for the purpose of carrying it out. There is no requirement that the defendant himself was responsible for the wire communication, that the wire communication itself was fraudulent or that the use of wire communications facilities in interstate commerce was intended as the specific or exclusive means of accomplishing the alleged fraud. But the government must prove beyond a reasonable doubt that defendant knew, or could reasonably have foreseen, that use of a wire communication would follow in the course of the scheme.

23. COUNT THREE- SOCIAL SECURITY FRAUD

Count 3 of the indictment charges that:

“On or about February 21, 2007, in the District of Rhode Island, defendant . . . did willfully and knowingly, for the purpose of obtaining a benefit to which he was not entitled, and for the purpose of obtaining a thing of value, with intent to deceive, falsely represent a number to be the social security number assigned by the Commissioner of Social Security to him when in fact such number was not the social security account number assigned by the Commissioner of Social Security to him, to wit: using the social security account number of Fionghal . . . MacEoghan in a Uniform Residential Loan Application and falsely representing that it was assigned to him in his attempt to

obtain said loan,” in violation of 42 U.S.C. § 408(A)(7)(B).

24. 42 U.S.C. § 408(A)(7)(B) – SOCIAL SECURITY FRAUD

Section 408(a)(7)(b) of Title 42 of the United States Code provides in relevant part:

“Whoever...for the purpose of obtaining . . . for himself . . . any payment or any . . . benefit to which he . . . is not entitled, or for the purpose of obtaining anything of value from any person, or for any other purpose...with intent to deceive, falsely represents a number to be the social security account number assigned by the Commissioner of Social Security to him..., when in fact such number is not the social security account number assigned by the Commissioner of Social Security to him” is guilty of a crime against the United States.

25. 42 U.S.C. § 408(A)(7)(B) – ESSENTIAL ELEMENTS

In count 3, the defendant is charged with social security fraud. For you to find the defendant guilty of this crime you must be convinced that the government has proven each of the following three elements beyond a reasonable doubt:

First, that the defendant willfully and knowingly represented to someone, for any purpose, that the social security number described in the indictment had been assigned to him by the commissioner of social security;

Second, that the social security number, in fact, had not been assigned to the defendant; and

Third, that the defendant made such representation with the intent to deceive.

26. COUNT FIVE- FALSE STATEMENT IN STUDENT LOAN APPLICATION

Count 5 of the indictment charges that:

“On days and dates from on or about January 15, 2009 up to and including on or about February 16, 2009, in the District of Rhode Island, defendant . . . did willfully and knowingly . . . obtain by fraud [or] false statement . . . any funds, assets, and property provided and insured under 20 U.S.C. § 1070 et seq., to wit: defendant completed a United States Department of Education, Free Application for Federal Student Aid on or about January 15, 2009, and on or about January 21, 2009, defendant signed a Master Promissory Note. Both of those documents contain materially false representations in that defendant misrepresented on each document that his name was Fionghal . . . MacEoghan and that his social security number was ***-**-0131. As a direct consequence of, and in reliance on these misrepresentations, \$14,756.84 in Department of Education student loan funds were disbursed to defendant through Johnson & Wales University in the form of an offset against tuition and fees,” in violation of 20 U.S.C. § 1097(a).

27. 20 U.S.C. § 1097(a) – FALSE STATEMENTS IN STUDENT LOAN APPLICATION

Section 1097(a) of Title 20 of the United States Code provides in relevant part:

“Any person who knowingly and willfully . . . obtains by fraud [or] false statement . . . any funds, assets, or property provided or insured under this subchapter,” is guilty of a crime against the United States.

28. 20 U.S.C. § 1097(a) – ESSENTIAL ELEMENTS

In count five the defendant is charged with making a false statement in a student loan application. For you to find the defendant guilty of this crime, you must be convinced that the government has proven each of the following three elements beyond a reasonable doubt:

First, that the defendant obtained by fraud, or false statement, United States Department of Education student loan funds.

Second, that the amount of the funds exceeded \$200.00, and

Third, that the defendant did so knowingly and willfully.

29. INTENT TO REPAY IS NOT A DEFENSE

The fact that the defendant may have intended to repay the funds at the time they were taken is not a defense.

30. COUNT SIX- FALSE STATEMENT IN PASSPORT APPLICATION

Count 6 of the indictment charges that:

“On or about January 17, 2002, in the District of Rhode Island, the defendant . . . willfully and knowingly made a false statement in an application for a United States passport with intent to induce and secure for his own use the issuance of a passport under the authority of the United States, contrary to the laws regulating the issuance of such passports and the rules prescribed pursuant to such laws, in that in such application the defendant stated that his name was Fionghal . . . MacEoghan, that his social security number was ***-**-0131, and that he held United States citizenship, which statements he knew to be false,” in violation of 18 U.S.C. § 1542.

31. 18 U.S.C. § 1542 – FALSE STATEMENT IN PASSPORT APPLICATION

Section 1542 of Title 18 of the United States Code provides in relevant part:

“Whoever willfully and knowingly makes any false statement in an application for passport with intent to induce or secure the issuance of a passport under the authority of the United States...for his own use...contrary to the laws regulating the issuance of passports or the rules prescribed pursuant to such laws,” is guilty of a crime against the United States.

32. 18 U.S.C. § 1542 – ESSENTIAL ELEMENTS

In count 6 the defendant is charged with making a false statement in an application for a United States passport. For you to find the defendant guilty of this crime you must be convinced that the government has proven each of the following two elements beyond a reasonable doubt:

First, that the defendant willfully and knowingly made a false statement in an application for a United States passport; and

Second, that the defendant made the false statement for the purpose of causing issuance of a passport for his own use.

33. COUNTS TWO, FOUR, AND SEVEN – AGGRAVATED IDENTITY THEFT

Count 2 of the indictment charges that:

“On or about February 21, 2007, in the District of Rhode Island, defendant . . . did, knowingly use without lawful authority, a means of identification to wit, the name and social security number of Fionghal . . . MacEoghan during and in relation to the commission of a violation of 18 U.S.C. § 1343

as alleged in Count 1,” in violation of 18 U.S.C. § 1028A.

Count 4 of the indictment charges that:

“On or about February 21, 2007, in the District of Rhode Island, defendant . . . did, knowingly use without lawful authority a means of identification of another person to wit the social security number of Fionghal . . . MacEoghan during and in relation to the commission of a violation of 42 U.S.C. § 408(a)(7)(B) as alleged in Count 3,” in violation of 18 U.S.C. § 1028A.

Count 7 of the indictment charges that:

“On or about January 17, 2002, in the District of Rhode Island, defendant . . . did, knowingly use without lawful authority, a means of identification of another person to wit the name and social security number of Fionghal . . . MacEoghan during and in relation to the commission of a violation of 18 U.S.C. § 1542 as alleged in Count 6,” in violation of 18 U.S.C. § 1028A.

34. 18 U.S.C. § 1028A – AGGRAVATED IDENTITY THEFT

Section 1028A(a)(1) of Title 18 of the United States Code provides in relevant part:

“Whoever, during and in relation to any felony violation enumerated in subsection (c), knowingly transfers, possesses, or uses, without lawful authority, a means of identification of another person” is guilty of a crime against the United States.

The felony violations enumerated in subsection (c), include Wire Fraud, Social Security Fraud, and Making a False Statement in a Passport Application as alleged in Counts 1, 3, and 6.

35. 18 U.S.C. § 1028A – ESSENTIAL ELEMENTS

In counts 2, 4 and 7, the defendant is charged with aggravated identify theft. Despite the title of the statute it is not necessary for you to find that the identity was stolen by the defendant. It is against federal law to use someone's identity. For you to find the defendant guilty of aggravated identify theft you must be convinced that the government has proven each of the following four elements beyond a reasonable doubt.

First, that the defendant committed the crime of wire fraud in count 1, social security fraud in count 3, and/or making a false statement in a passport application in count 6.

Second, that during and in relation to the crime of wire fraud, social security fraud, and/or making a false statement in a passport application, the defendant, knowingly used a means of identification, i.e., the name and social security number of Fionghal MacEoghan without lawful authority.

Third, that the means of identification actually belonged to another person.

Fourth, that the defendant knew that the means of identification belonged to another person.

36. “MEANS OF IDENTIFICATION”- DEFINED

The term “means of identification” means any name or number that may be used, alone or in conjunction with any other information, to identify a specific individual, including any name, social security number, date of birth, official state or government issued driver's license or identification number.

37. “DEFENDANT’S KNOWLEDGE”

The government must prove that the defendant knew that he did not have lawful authority to use the means of identification in question, and that the defendant knew that the means of identification belonged to an actual person.

38. COUNT EIGHT- FALSE STATEMENT IN RESIDENTIAL LOAN APPLICATION

Count 8 of the indictment charges that

“On or about February 21, 2007, in the District of Rhode Island, [the] defendant . . . did willfully and knowingly make and cause to be made . . . materially false, fictitious, and fraudulent statements and representations in a matter within the jurisdiction of a department or agency of the United States to wit, the United States Federal Housing Finance Agency, by falsely stating in a Uniform Residential Loan Application that defendant[’s] . . . name was Fionghal MacEoghan and that he had been assigned social security number ***-**-0131. The statements and representations were false because, as defendant . . . then and there knew, defendant . . . was not Fionghal MacEoghan and defendant . . . had never had a social security number assigned to him by the Commissioner of Social Security,” in violation of 18 U.S.C. § 1001.

39. 18 U.S.C. § 1001 – FALSE STATEMENT IN RESIDENTIAL LOAN APPLICATION

Section 1001 of Title 18 of the United States Code provides in relevant part:

“(a) [W]hoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully...makes any materially false, fictitious, or fraudulent statement or representation,” is guilty of a crime against the United States.

40. 18 U.S.C. § 1001 – ESSENTIAL ELEMENTS

In count 8 the defendant is charged with making a false statement in a matter within the jurisdiction of a government agency. For you to find the defendant guilty of this crime you must be convinced that the government has proven each of the following three elements beyond a reasonable doubt:

First, that the defendant knowingly and willfully made a material false statement;

Second, that the defendant made the statement voluntarily and intentionally; and

Third, that the defendant made the statement in a Uniform Residential Loan Application.

41. “MATERIAL”- DEFINED

A statement is “material” if it has a natural tendency to influence or to be capable of influencing the decision of the decision maker to which it was addressed, regardless of whether the agency actually relied upon it.

42. “KNOWINGLY” – DEFINED

In these instructions I have used the term “knowingly.” The defendant acted “knowingly” if he was conscious and aware of his actions, realized what he was doing or what was happening around him and did not act because of ignorance, mistake or accident.

43. “WILLFULLY” DEFINED

In these instructions I have used the term “willful” or “willfully.” An act or failure to act is “willful” if done voluntarily and intentionally, and with the specific intent to do something the law forbids, or with specific intent to fail to do something the law requires to be done; that is to say, with bad purpose either to disobey or to disregard the law. The burden to prove intent, as with all other elements of the crime, rests with the government.

44. “WILLFULLY AND KNOWINGLY MADE A FALSE STATEMENT” – DEFINED

In these instructions I have used the phrase “willfully and knowingly made a false statement.” A false statement is made willfully and knowingly if the defendant acted voluntarily, not by mistake or accident, and knew that the statement was false or he demonstrated a reckless disregard for the truth with a conscious purpose to avoid learning the truth.

45. “FALSE STATEMENT” – DEFINED

In these instructions I have used the phrase “false statement.” A statement is false if it was untrue when made.

PART III: CONSIDERATION OF THE EVIDENCE

46. EXHIBITS

Exhibits admitted into evidence by the Court are properly before you, and will be available to you during your deliberations. An exhibit marked by the Court for identification is not evidence in the case unless or until it was admitted by the Court as a full exhibit. If it has not been admitted as a full exhibit, you may not consider it. If it was admitted, however, it is just as much a part of the evidence in the case as the testimony which you have heard from the witness stand.

47. REMARKS OF COUNSEL

Remarks, statements, or questions by counsel are not evidence and are not to be considered by you as evidence during your deliberations. Neither should you permit objections by counsel to the admission of evidence, or the rulings of the Court, create any bias or prejudice toward counsel or the party whom he or she represents. It is the duty of counsel for both sides to represent their clients vigorously and to defend their client's rights and interests. In the performance of that duty, counsel freely may make objection to the admission of offered evidence, or to any other ruling of the Court, and should not be penalized for doing so.

48. CONDUCT OF COURT AND COUNSEL

If during trial, or in instructing you, I have said or done anything that has caused you to believe that I was indicating an opinion as to what the facts are in this case, you should put that belief out of your mind. I did not intend to indicate any such opinion. In fact, I try not to have an opinion about the case because you are the sole and exclusive judges of the facts.

In determining the facts, you are to consider only that evidence which has properly been placed before you. It is the Court's duty to pass upon the admissibility of the offered evidence, that is, to decide whether or not offered evidence should be considered by you. Evidence admitted by the Court is properly before you for your consideration; evidence which the Court has refused to admit, or may have stricken from the record after you heard it, is not proper subject for your deliberations and is not to be considered by you.

49. TESTIMONY OF WITNESSES

The law does not require you to accept or credit the evidence I have admitted. In determining what evidence you will accept, you must make your own evaluation of the testimony given by each of the witnesses, and the weight you choose to give to his or her testimony.

In evaluating the testimony of witnesses you may consider several facts-the opportunity of the witnesses to have acquired knowledge of that to which they testified; their conduct and demeanor while testifying; their interest or lack of interest, if any, in the outcome of the case; their intelligence or lack thereof; and the probability or improbability of the truth of their testimony.

Inconsistencies or discrepancies in the testimony of a witness or between the testimony of different witnesses may or may not cause you to disbelieve or discredit such testimony. Two or more persons witnessing an incident or a transaction may simply see or hear it differently. Innocent misrecollection, like failure of recollection, is not an uncommon experience. In weighing the effect of a discrepancy, however, always consider whether it pertains to a matter of importance or an insignificant detail and consider whether the discrepancy results from innocent error or from intentional falsehood.

From these circumstances, and from all of the other facts and circumstances proved at the trial, you may determine whether or not the government has sustained its burden of proof.

50. IMPEACHMENT OF DEFENDANT'S TESTIMONY BY PRIOR CONVICTION

You have heard evidence that the defendant was convicted of a crime. You may consider that evidence in deciding, as you do with any witness, how much weight you give defendant's testimony. The fact that the defendant was previously convicted of another crime does not mean that he committed the crime for which he is now on trial. You must not use that prior conviction as proof of the crime in this case.

PART IV: DELIBERATIONS AND VERDICT

51. UNANIMOUS VERDICT -- JURY CONDUCT

To render a verdict, all twelve of you must agree, that is, your verdict must be unanimous. Therefore, during your deliberations and in your consideration of the evidence, you should exercise reasonable and intelligent judgment. It is not required that you yield your view simply because a majority holds to the contrary view, but in pursuing your deliberations, you should keep your minds reasonably open with respect to any point in dispute so that you will not be prevented from achieving a unanimous verdict due to mere stubbornness. It is your right, however, to maintain your view. The vote of each juror is as important as the vote of any other juror, and you need not give up your view, sincerely held, simply because a majority holds to the contrary view.

Do not approach your consideration of the case in an intellectual vacuum. You are not required to disregard your experiences and observations in the ordinary everyday affairs of life. Indeed, your experiences and observations are essential to your exercise of sound judgment and discretion, and it is your right and duty to consider the evidence in light of such experiences and observations. It is hoped and anticipated that you will sift all of the evidence in this case through maturity and common sense.

Of course, prejudice, sympathy or compassion should not be permitted to influence you. All that any party is entitled to, or expects, is a verdict based upon your fair, scrupulous and conscientious examination of the evidence and an application of the law to that evidence as I have instructed you.

52. COMMUNICATIONS BETWEEN COURT AND JURY DURING DELIBERATIONS

If it becomes necessary during your deliberations to communicate with the Court, you may send a note signed by your foreperson, or by one or more members of the jury. The foreperson may then hand such written request or question to the marshal in whose charge you will be placed. The marshal will bring any written questions or requests to me. I will have you brought into the courtroom and will attempt to fulfill your request or answer your question. Other than the method outlined, please do not attempt to communicate privately or in any other way with the Court.

Bear in mind also that you are never to reveal to any person-not even to the Court-how the jury stands, numerically or otherwise, on the question of whether the accused is guilty or not guilty, until after you have reached a unanimous verdict.

You may now retire with the marshal to enter upon your deliberations. When you have reached a verdict, you will return here and make your verdict known.