

**Jury Instructions**

**United States of America v. Daniel Saad  
(16-cr-035-M)**

I intend to give you a copy of these instructions for use in the jury room, so feel free to simply listen and not worry about note taking.

**Introduction**

At this time, it is my duty to instruct you on the law applicable to this case. You must consider the instructions as a whole. You should not choose one part and disregard another. You must accept and apply the law as I give it to you in its entirety, and this is true whether you personally agree with the law or not. It would be a violation of the oath you took as jurors to base a decision on any version of the law other than that contained in my instructions, just as it would be a violation of that oath to return a decision upon anything but the evidence in this case. It is not up to you to decide what the law is or should be. Your duty is to apply the law as I explain it to you.

**Presumption of Innocence**

As I told you at the start of this trial, Mr. Saad is presumed to be innocent of the accusations against him. This presumption of innocence remains with Mr. Saad unless and until the government presents evidence satisfying you beyond a reasonable doubt that he is guilty.

The presumption of innocence is sufficient to require a not guilty verdict unless you find that such evidence has been presented.

If you find that the government has proven Mr. Saad guilty beyond a reasonable doubt, the presumption of innocence disappears and is of no further avail to him. However, unless and until that time, the presumption remains with Mr. Saad.

**The Government as a Party**

The mere fact that this case is brought in the name of the United States does not entitle the prosecution to any greater consideration than that accorded to Mr. Saad. By the same token, it does not mean that the prosecution is entitled to any less consideration. All parties, whether government or individuals, stand as equals at the bar of justice.

**Proof of All Elements**

Shortly, I will explain the offenses with which Mr. Saad is charged and the elements the government must prove in order to establish that Mr. Saad is guilty of that offense.

In order for the government to prove Mr. Saad guilty of an offense, it must convince you, beyond a reasonable doubt, that it has proved each and every element of that offense. Possibilities or even probabilities are not sufficient.

If the government fails to prove any one or more elements of an offense beyond a reasonable doubt, then you must find Mr. Saad not guilty.

On the other hand, if you are convinced, beyond a reasonable doubt, that all elements of an offense with which Mr. Saad has been charged have been proven to you beyond a reasonable doubt, then you should find him guilty of that offense.

**Reasonable Doubt**

As I have said, the burden is upon the government to prove beyond a reasonable doubt that Mr. Saad is guilty of the charges made against him. It is a strict and heavy burden, but it does not mean that Mr. Saad's guilt must be proved beyond all possible doubt. It does require that the evidence exclude any reasonable doubt concerning Mr. Saad's guilt.

A reasonable doubt may arise not only from the evidence produced but also from a lack of evidence. Reasonable doubt exists when, after weighing and considering all the evidence, using reason and common sense, jurors cannot say that they have a settled conviction of the truth of the charge.

Of course, Mr. Saad is never to be convicted on suspicion or conjecture. If, for example, you view the evidence in the case as reasonably permitting either of two conclusions — one that Mr. Saad is guilty as charged, the other that Mr. Saad is not guilty — then you must find Mr. Saad not guilty.

It is not sufficient for the government to establish a probability, even a strong one, that a fact charged is more likely to be true than not true. That is not enough to meet the burden of proof beyond reasonable doubt. On the other hand, there are very few things in this world that we know with absolute certainty, and in criminal cases the law does not require proof that overcomes every possible doubt; proof beyond a reasonable doubt is sufficient to convict.

Concluding my instructions on the burden, then, I instruct you that what the government must do to meet its heavy burden is to establish the truth of each part of each offense charged by proof that convinces you and leaves you with no reasonable doubt, and thus satisfies you that you can, consistently with your oath as jurors, base your verdict upon it. If you so find as to any of the charges against Mr. Saad, then you will return a verdict of guilty as to that charge. If, on the other hand, you think there is a reasonable doubt about whether Mr. Saad is guilty of any of the charges, then you must give Mr. Saad the benefit of the doubt and find Mr. Saad not guilty as to that charge.

**Testimony of Defendant**

I have instructed you that a defendant has no obligation to testify and his failure to testify could not in any way be held against him. In this case, Mr. Saad decided to testify. You should examine and evaluate his testimony just as you would the testimony of any witness with an interest in the outcome of this case. You should not disregard or disbelieve his testimony simply because he is charged as a defendant in this case.

**Alibi**

One of the issues in this case is whether Mr. Saad was present at the time and place of the alleged crime. If, after considering all the evidence, you have a reasonable doubt that Mr. Saad was present, then you must find him not guilty.

**Indictment – Effect**

You will have the indictment with you in the jury room to help you remember the precise nature of the charges against the defendant.

I remind you that the indictment is nothing more than an accusation. It should not be considered as evidence of guilt. It may not even be the basis of an inference of guilt.

All that it does is bring this matter before you for determination. Beyond that, it has no significance whatsoever. It merely sets forth the elements of the offenses that the government must prove beyond a reasonable doubt.

**Charges**

Mr. Saad is charged with four counts. Counts One and Two charge Mr. Saad with wire fraud. Count Three charges Mr. Saad with the use of fire to commit a federal crime; in this case,

the federal crime is wire fraud. Count Four charges arson of a building in or affecting interstate commerce. I will now describe each of these crimes for you.

**Wire Fraud, 18 U.S.C. § 1343**

Mr. Saad is charged with two counts of violating the federal statute making wire fraud illegal. For you to find Mr. Saad guilty of wire fraud, you must be convinced that the government has proven each of the following things beyond a reasonable doubt:

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

Second, Mr. Saad's knowing and willful participation in this scheme with the intent to defraud; and

Third, the use of interstate wire communications, on or about the date alleged, in furtherance of this scheme.

"Interstate wire communications" include telephone and/or email communications from one state to another.

A "scheme" includes any plan, pattern or course of action. The term "defraud" means to deprive another of something of value by means of deception or cheating. A scheme to defraud is ordinarily accompanied by a desire or purpose to bring about some gain or benefit to oneself or some other person or by a desire or purpose to cause some loss to some person. It includes a scheme to deprive another of the intangible right of honest services.

The term "false or fraudulent pretenses" means any false statements or assertions that concern a material aspect of the matter in question, that were either known to be untrue when

made or made with reckless indifference to their truth and that were made with the intent to defraud. They include actual, direct false statements as well as half-truths and the knowing concealment of facts.

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

Mr. Saad 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.

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.

To act with “intent to defraud” means to act willfully and with the specific intent to deceive or cheat for the purpose of either causing some financial loss to another or bringing about some financial gain to oneself. Thus, if Mr. Saad acted in good faith, he cannot be guilty of the crime. The burden to prove intent, as with all other elements of the crime, rests with the government.

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 Mr. Saad knew or intended at a particular time, you may consider any statements made or acts done or omitted by Mr. Saad and all other facts and circumstances received in evidence that may aid in your determination of his 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.

It is not necessary that the government prove all of the details alleged in the indictment concerning the precise nature and purpose of the scheme or that the material transmitted by wire was itself false or fraudulent or that the alleged scheme actually succeeded in defrauding anyone or that the use of wire communications facilities in interstate commerce was intended as the specific or exclusive means of accomplishing the alleged fraud.

What must be proven beyond a reasonable doubt is that Mr. Saad knowingly devised or intended to devise a scheme to defraud that was substantially the same as the one alleged in the indictment; and that the use of the wire communications facilities in interstate commerce on or about the date alleged was closely related to the scheme because Mr. Saad either made or caused an interstate communication to be made in an attempt to execute or carry out the scheme. To “cause” an interstate communication to be made is to do an act with knowledge that an interstate communication will follow in the ordinary course of business or where such a communication can reasonably be foreseen.

Remember, if you find that the government has not satisfied every element of the offense charged by proof beyond a reasonable doubt then you are obligated to acquit Mr. Saad.

**Use of Fire in Furtherance of a Federal Crime, 18 U.S.C. § 844(h)**

Title 18, United States Code, Section 844(h) makes it a crime to use fire or an explosive to commit a felony. For you to find the defendant guilty, the government must prove each of the following beyond a reasonable doubt:

First, that the defendant used fire or an explosive; and

Second, the defendant did so to commit a felony which may be prosecuted in federal court. In this case, the government has alleged that Mr. Saad used fire to commit the crime of wire fraud. I have previously instructed you on the elements of that offense.

The use of fire or an explosive need not result in damage or destruction of the property.

Remember, if you find that the government has not satisfied every element of the offense charged by proof beyond a reasonable doubt then you are obligated to acquit Mr. Saad.

**Arson, 18 U.S.C. § 844(i)**

Mr. Saad has been charged with arson of Snow's Clam Box at 2461 Putnam Pike in Glocester, Rhode Island. The government must prove each of the following elements beyond a reasonable doubt:

First, that the defendant damaged or destroyed, or attempted to damage or destroy, a building, or other real property;

Second, that the defendant did so by means of fire or an explosive;

Third, that, at the time of the fire, the building, or personal property was used in interstate or foreign commerce or in any activity affecting interstate commerce. "Interstate commerce" means commerce or business between any place in one state and another place outside that state. It also means commerce between places within the same state, but passing through any place



outside of that state. The rental of real estate constitutes an activity affecting interstate commerce for purposes of the arson statute, even if such effect was minimal;

Fourth, that the defendant did so maliciously. “Maliciously” means acting intentionally or with willful disregard of the likelihood that damage or injury will result.

If you find that the facts establish beyond a reasonable doubt that the property in question comes within the definition of “property used in or affecting interstate commerce” which I have just described to you, I instruct you as a matter of law that the third element of the offense is satisfied.

Remember, if you find that the government has not satisfied every element of the offense charged by proof beyond a reasonable doubt then you are obligated to acquit Mr. Saad.

**Aid and Abet, 18 U.S.C. § 2**

Mr. Saad is charged in Count 4 with arson both as a principal and as aiding and abetting another. To “aid and abet” means intentionally to help someone else commit a crime. To establish aiding and abetting, the government must prove beyond a reasonable doubt:

First, that someone else committed the crime of arson; and

Second, that defendant took an affirmative act to help or cause the arson. This “affirmative act” element can be satisfied without proof that the defendant participated in each and every element of the arson. It is enough if the defendant assisted in the commission of the arson or caused the arson to be committed; and

Third, that the defendant intended to help or cause the commission of the arson. This “intent” element is satisfied if the particular defendant had advanced knowledge of the facts that

make the principal's conduct criminal. "Advance knowledge" means knowledge at a time the defendant can opt to walk away.

A general suspicion that an unlawful act may occur or that something criminal is happening is not enough. Mere presence at the scene of the arson and knowledge that the arson is being committed are also not sufficient to establish aiding and abetting. But you may consider these things among other factors in determining whether the government has met its burden.

### **Method of Assessing Evidence**

Now that you know what it is that the government must prove and the standard of proof to be applied, the next question is how do you determine whether the government has proved these things beyond a reasonable doubt?

Obviously, you must make your determination solely from the evidence properly before you and from all reasonable and legitimate inferences to be drawn from that evidence.

The evidence that is properly before you consists of:

1. The testimony of the witnesses; and
2. The exhibits that I have admitted into evidence.

From that evidence, you may draw whatever conclusions are reasonable under the circumstances.

The evidence that is properly before you does not include:

1. Comments or statements by the attorneys;
2. Documents, photographs or other items which may have been referred to but have not been admitted into evidence; or

3. Anything you may have heard or seen outside of this courtroom regarding the events in question or the participants in this case.

**Witnesses - Credibility - General Factors**

As to the testimony of witnesses, your principal task is to determine the credibility of the witnesses and the weight you will give to the testimony of each.

In making that determination, there are a number of factors that you may consider:

1. The opportunity or lack of opportunity the witness had to acquire knowledge of the facts about which the witness testified. In other words, was the witness in a position to have accurately perceived the facts that the witness related to you.
2. The reliability or unreliability of the witness's memory. In other words, did the witness have a clear recollection of what happened or was the witness's memory uncertain or unclear.
3. The witness's appearance on the stand. Did the witness appear to be a person who was telling the complete and unadulterated truth, or did it appear that the witness was slanting things one way or another either consciously or unconsciously.
4. The probability or improbability of the witness's testimony. Did what the witness have to say sound reasonable or plausible or did it appear to be highly unlikely or impossible.
5. Whether the witness had anything to gain or lose from the outcome of this case. In other words, was the witness totally impartial or did the witness have some stake in the outcome or some reason to favor one side or the other.

### **Government Agents**

The fact that a witness may be employed by a law enforcement agency does not, by itself, mean that you should give that witness's testimony any greater or any lesser weight simply because of that fact. You should assess the credibility and testimony of such a witness by applying the same factors as you would with respect to any other witness.

### **Witnesses - Number - Weight of Testimony**

In evaluating the testimonial evidence, remember that you are not required to believe something to be a fact simply because a witness has stated it to be a fact and no one has contradicted what that witness said. If, in the light of all of the evidence, you believe that the witness is mistaken or has testified falsely or that he is proposing something that is inherently impossible or unworthy of belief, you may disregard that witness's testimony even in the absence of any contradictory evidence.

Just because there may be more witnesses testifying on one side of an issue than on the other does not mean that the weight of the evidence lies in favor of the greater number of witnesses. Once again, it is the credibility or quality of the testimony that determines where the weight of the evidence lies.

### **Exhibits**

In addition to assessing the credibility of the witnesses and the weight to be given to their testimony, you should also evaluate the exhibits which you will have with you in the jury room. Examine them and consider them carefully.

However, bear in mind that merely because an exhibit has been admitted into evidence does not mean that you are required to accept it at face value. Like the testimony of a witness, the significance of an exhibit or the weight you attach to it will depend upon your evaluation of that exhibit in light of all the facts and circumstances of the case.

### **Circumstantial Evidence**

As I mentioned previously, you may consider only the evidence that is properly before you. However, that does not mean that, in determining the facts, you are limited to the statements of the witnesses or the contents of the exhibits.

In reaching your conclusions, you are permitted to draw, from facts which you find have been proved, such reasonable inferences as seem justified in the light of your experience. 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.

Such evidence is sometimes called circumstantial evidence. To put it another way, a fact may be proved either by direct evidence or by circumstantial evidence. Direct evidence includes such things as the testimony of an eyewitness who personally observed the fact in question or a photograph or document showing the actual thing described.

Circumstantial evidence consists of proof of a series of facts or circumstances from which the existence or nonexistence of another fact may be reasonably inferred. (Example: rain on the pavement.)

The law makes no distinction between the weight to be given to direct and circumstantial evidence. However, it does require that any fact required to convict a Defendant be proved beyond a reasonable doubt.

### **Conduct of Court - General**

As I have said before, it is up to you to determine the facts in this case. You should not interpret anything I have said or done during this trial as expressing an opinion on my part as to what the facts in this case are. I have not intended to express any such opinion and you should not be concerned about what my opinions might be regarding the facts. That is a matter for you to decide.

### **Objections by Counsel**

During this trial there have been occasions when the attorneys have objected to a question that was asked of a witness. You should not penalize an attorney, or more importantly, his client, for objecting. It is the attorney's right and duty to protect the client's interests by objecting to what the attorney may believe is evidence that does not satisfy the requirements of the rules of evidence.

If I sustained the objection, it is important that you not speculate about what the answer to the objected-to question might have been. By sustaining the objection, the Court has determined that the evidence should not be considered by you.

### **Bias and Prejudice**

Neither bias in favor of any person or cause, prejudice against any person or cause, nor sympathy of any kind should be permitted to influence you in the course of your deliberations.

All that any party here is entitled to, or, for that matter expects, is a verdict based upon your fair, scrupulous and conscientious examination of the evidence before you and your application of the law as I have explained it to you.

**Verdict - Unanimity Required**

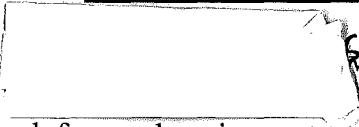
In order to return a verdict in this case, all twelve of you must agree as to what that verdict will be. You cannot return a verdict of either guilty or not guilty with respect to any charge against Mr. Saad unless your decision is unanimous, meaning that you all agree.

Therefore there are two things that you should keep in mind during the course of your deliberations:

On the one hand, you should listen carefully as to what your fellow jurors have to say and should be open minded enough to change your opinion if you become convinced that it was incorrect.

On the other hand, you must recognize that each of you has an individual responsibility to vote for the verdict that you believe is the correct one based on the evidence that has been presented and the law as I have explained it. Accordingly, you should have the courage to stick to your opinion even though some or all of the other jurors may disagree as long as you have listened to their views with an open mind.

**Foreperson And Duty to Deliberate**

Juror # 7,  will be the foreperson. S/he will preside over the deliberations and speak for you here in court.

You will discuss the case with your fellow jurors to reach agreement if you can do so. Your verdict must be unanimous, meaning all of you must agree. Each of you must decide the case for yourself, but you should do so only after you have considered all of the evidence, discussed it fully with the other jurors, and listened to the views of your fellow jurors.

Do not be afraid to change your opinion during the course of the deliberations if the discussion persuades you that you should. But, do not come to a decision simply because other jurors think it is right.

**Communications with the Court**

If it becomes necessary during your deliberations to communicate with me, you may send a note through the marshal, signed by the foreperson. No member of the jury should ever attempt to contact me except by a signed writing; and I will communicate with any member of the jury on anything concerning the case only in writing, or here in open court.

**Other Communications Prohibited**

During your deliberations, you must not communicate with or provide any information to anyone by any means about this case. You may not use any electronic device or media, such as the telephone, a cell phone, smart phone, or computer, the internet, any internet service, any text or instant messaging service, any internet chat room, blog, or website such as Facebook, LinkedIn, YouTube or Twitter, to communicate to anyone any information about this case or to



conduct any research about this case until I accept your verdict. In other words, you cannot talk to anyone on the phone, correspond with anyone, or electronically communicate with anyone about this case.

**Return of Verdict**

A verdict form has been prepared for you by the Court. After you have reached unanimous agreement on a verdict, your foreperson will fill in the form that has been given to you, sign it and date it, and let the Court Security Officer know that you are ready to return to the courtroom.

REVIEW VERDICT FORM

**Copy of Instructions**

I have instructed you on the law that governs your deliberations. I will send into the jury room a written copy of my instructions.

**Exhibits**

Several exhibits were admitted during the trial. The clerk will gather those exhibits and bring them to the jury room shortly.