

FINAL INSTRUCTIONS

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Instruction No. 2.

DESCRIPTION OF CHARGES; INDICTMENT NOT EVIDENCE;
PRESUMPTION OF INNOCENCE; BURDEN OF PROOF

The indictment charges the defendant with kidnapping resulting in death. As I told you at the beginning of the trial, an indictment is simply an accusation. It is not evidence of anything. To the contrary, the defendant is presumed to be innocent. Thus, the defendant, even though charged, begins the trial with no evidence against him. Accordingly, the fact that the defendant did not testify must not be considered by you in any way, or even discussed, in arriving at your verdict. The presumption of innocence alone is sufficient to find the defendant not guilty and can be overcome only if the government proves, beyond a reasonable doubt, each essential element of the crime charged. Reasonable doubt has been defined for you at Preliminary Instruction No. 2.

Instruction No. 3

“ON OR ABOUT”

The Indictment charges that the offense alleged was committed “on or about” a certain date. Although it is necessary for the United States to prove beyond a reasonable doubt that the offense was committed on a date reasonably near the date alleged in the Indictment, it is not necessary for the United States to prove that the offense was committed precisely on the date charged.

Instruction No. 4

KIDNAPPING RESULTING IN DEATH - ESSENTIAL ELEMENTS

The offense of kidnapping resulting in death as charged in the Indictment has four essential elements, which are:

- One: Alfonso Rodriguez, Jr., knowingly acting contrary to law, kidnapped, seized, confined, inveigled, decoyed, abducted or otherwise carried away Dru Katrina Sjodin;
- Two: Alfonso Rodriguez, Jr. held Dru Katrina Sjodin for some purpose or benefit;
- Three: Alfonso Rodriguez, Jr. willfully, knowingly, and unlawfully transported Dru Katrina Sjodin in interstate commerce while she was so kidnapped, seized, confined, inveigled, decoyed, abducted or otherwise carried away; and
- Four: the death of Dru Katrina Sjodin resulted from the conduct.

For you to find Mr. Rodriguez guilty of this offense, the government must prove each of these essential elements beyond a reasonable doubt; otherwise you must find him not guilty.

You need not unanimously agree on why the defendant kidnapped, seized, confined, inveigled, decoyed, abducted, or carried away and held Dru Katrina Sjodin as long as you each find that he had some purpose or derived some benefit from the kidnapping, seizing, confining, inveigling, decoying, abducting, or carrying away and holding of her.

In the third element, the term “willfully” means that the defendant acted voluntarily and with the intent to violate the law. The term “interstate commerce” means commerce or travel between one state and another state. The victim is willfully transported in interstate commerce, regardless of whether the victim was alive when transported across a State boundary, if the victim was alive at the moment the transportation began. The transportation of the victim began when she was willfully moved any distance whatsoever from the precise point or place of her abduction so long as that movement was not merely incidental to an offense other than the kidnapping charged in this Indictment. The United States need not prove that the defendant knew that he was crossing a state line with the victim or the victim’s body.

To “decoy” means to entice or lure by means of some fraud, trick or temptation. To “inveigle” a person means to lure, or entice, or lead the person astray by false representations or promises or other deceitful means. To “kidnap” a person means to forcibly and unlawfully hold, keep, detain and confine the person against his or her will. To “seize” means to forcibly take possession of a person. So, involuntariness or coercion in connection with the victim’s detention is an essential part of the offense.

Instruction No. 5

PROOF OF KNOWLEDGE OR INTENT

The intent of a person or the knowledge that a person possesses at any given time may not ordinarily be proved directly because there is no way of directly scrutinizing the workings of the human mind. In determining the issue of what a person knew or what a person intended at a particular time, you may consider any statements made or acts done by that person and all other facts and circumstances received in evidence which may aid in your determination of that person's knowledge or intent.

You may infer, but you are certainly 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 to find from the evidence received during this trial.

Instruction No. 6

“KNOWINGLY”

An act is done knowingly if the defendant is aware of the act and does not act through ignorance, mistake, or accident. The United States is not required to prove that the defendant knew that his acts or omissions were unlawful. You may consider evidence of the defendant’s words, acts, or omissions, along with all the other evidence, in deciding whether the defendant acted knowingly.

Instruction No. 7

OPINION EVIDENCE - EXPERT WITNESSES

You have heard testimony from persons described as experts. Persons who, by knowledge, skill, training, education or experience, have become expert in some field may state their opinions on matters in that field and may also state the reasons for their opinion.

Expert testimony should be considered just like any other testimony. You may accept or reject it, and give it as much weight as you think it deserves, considering the witness's education and experience, the soundness of the reasons given for the opinion, the acceptability of the methods used, and all the other evidence in the case.

Instruction No. 8

TAPE RECORDED CONVERSATIONS

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

Instruction No. 9

TYPEWRITTEN TRANSCRIPTS OF TAPE RECORDINGS

As you have heard and seen, there are typewritten transcripts of the tape recordings which were played for you. Those transcripts also undertake to identify the speakers engaged in the conversations.

You were permitted to read the transcripts for the limited purpose of helping you follow the conversation as you listened to the tape recordings, and also to help you keep track of the speakers. The transcripts, however, are not evidence. The tape recordings themselves are the primary evidence of their own contents.

Differences in meaning between what you heard in the recordings and read in the transcripts may be caused by such things as the inflection in a speaker's voice. You should, therefore, rely on what you heard rather than what you read when there is a difference.

Instruction No. 10

STATEMENT BY DEFENDANT

You have heard testimony that Alfonso Rodriguez, Jr. made a statement to law enforcement.

It is for you to decide:

First, whether Alfonso Rodriguez, Jr. made the statement; and

Second, if so, how much weight you should give to it.

In making these two decisions you should consider all of the evidence, including the circumstances under which the statement may have been made.

Instruction No. 11

SENTENCING NOT CONSIDERED

The punishment provided by law for the offense charged in the Indictment must never be considered by you in any way in arriving at your impartial verdict as to the guilt or innocence of the defendant.

Instruction No. 12

VERDICT FORM

You will be given a verdict form for your use. The verdict form is simply the written notice of the decision that you reach in this case. You will take this form to the jury room and, when each of you has agreed on a verdict, your foreperson will fill in the form, sign and date it, and advise the marshal or bailiff that you are ready to return to the courtroom.

In answering these questions which will be on the verdict form, you must be unanimous.

Instruction No. 13

DELIBERATION INSTRUCTIONS

You will now go into the jury room and begin your deliberations. In conducting your deliberations and returning your verdict, there are certain rules which you must follow.

Picking a Foreperson

First, when you go to the jury room, you must select one of your members as your foreperson. That person will preside over your discussions and speak for you here in court.

Discussing the Case

Second, it is your duty, as jurors, to discuss this case with one another in the jury room. You should try to reach agreement if you can, because the verdict - whether guilty or not guilty - must be unanimous. Each of you must make your own conscientious decision, but only after you have considered all the evidence, discussed it fully with your fellow jurors, and listened to the views of your fellow jurors. Do not be afraid to change your opinions if the discussion persuades you that you should. However, do not come to a decision simply because other jurors think it is right or simply to reach a verdict.

Communications with Judge

Third, if you need to communicate with me during your deliberations, you may send a note to me through the marshal or bailiff. The note should be signed by one or more jurors. I will respond as soon as possible either in writing or orally in open court. Do not tell me how you stand on your vote -- for example, do not tell me that you have a question and that some number of you want to find "guilty" and some other number of you want to find "not guilty."

Verdict Based Solely on Evidence

Fourth, your verdict must be based solely on the evidence you heard and saw in this

courtroom and on the law which I have given to you in these instructions. Nothing I have said or done is intended to suggest what your verdict should be -- that is entirely for you to decide.

Dated in Fargo, North Dakota, this 29th day of August, 2006.

Ralph R. Erickson
Judge of the United States District Court
District of North Dakota