IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Case No. _____

UNITED STATES OF AMERICA,

Plaintiff,

v.

_____,

Defendant.

JURY INSTRUCTIONS

INSTRUCTION NO. 1

Preliminary Instruction - How Trial Will Proceed

Members of the Jury:

name) and (Defendant's name) later divided the over $600,000 that had been stolen.

- On June 17, 2014, the stolen Honda Element was driven to an open space in Adams County, Colorado, about 4.5 miles from the Wells Fargo bank that had been robbed. It was set on fire, and (Coconspirator's name) and (Defendant's name) ran from the direction of the burning vehicle and got into a silver Jeep Cherokee.
- On or about June 18, 2014, one of the members of the conspiracy delivered to the third member, the Wells Fargo employee, a portion of the proceeds from the bank robbery.

Count 2: Armed Bank Robbery

- On or about June 17, 2014, (Coconspirator's name) and (Defendant's name) committed the bank robbery described above and risked the lives of Wells Fargo Bank employees and others during it by using a dangerous weapon.

Count 3: Conspiracy to Commit Bank Robbery (2015)

- Between in or about February 2015 and March 18, 2015, (Coconspirator's name) and (Defendant's name) conspired to commit Bank Robbery by taking property from a bank insured by the Federal Deposit Insurance Corporation.
- On March 3, 2015, (Coconspirator's name) met with an undercover FBI agent he thought was a person employed as a driver of an armored car company that delivered money to banks. At the meeting, (Coconspirator's name) and the FBI agent discussed robbing cash delivered by the armored car. One option they talked about was (Coconspirator's name) and a person he said was his partner robbing a bank shortly after the armored car made a large delivery of cash to a bank. The FBI agent told (Coconspirator's name) that he would be able to inform him and his partner when a very large deposit was about to be made.

- On March 5, 2015, (Coconspirator's name) gave an undercover FBI agent a cellphone to have secure contact between them while planning the bank robbery. (Coconspirator's name) advised the FBI agent that he would arrange to have his partner meet him.
- On March 9, 2015, the FBI agent met (Coconspirator's name) and (Defendant's name) and talked more about planning and carrying out a bank robbery at a bank where the FBI agent would deliver a large amount of cash. (Defendant's name) advised the FBI agent that he would provide him with another untraceable cellphone to help with planning and carrying out the bank robbery.
- On March 11, 2015, (Defendant's name) met with the FBI agent and told him he did not have the phone yet. They talked about the bank robbery, and (Defendant's name) promised the FBI agent that mistakes made after a prior robbery would not happen this time. (Defendant's name) told the FBI agent that (Coconspirator's name) and another person would go into the bank and rob it while he was in the parking lot of the bank as a lookout. (Coconspirator's name) arrived at the meeting and the three agreed to meet in the near future to drive aro(he)4(ne)4(a)4(r)3( )-10(f-asn)4(r)3(-2(or)he)4cld prpo-2(orsat)-6(2w [(t)9lT

around the banks to prepare to go into the bank and escape after the robbery. The FBI agent gave a sketch of the inside of two specific banks to (Coconspirator's name). (Defendant's name) told the FBI agent he would give him a new phone on March 17, 2015, so the FBI agent could tell (Coconspirator's name) and (Defendant's name) the time and location of a large cash deposit to a specific bank. (Coconspirator's name) and (Defendant's name) talked to the FBI agent about a code on the cellphone for when the deposit would be made and a code to use if the plan should be cancelled.

(Defendant's name) has pleaded not guilty to each count and is presumed innocent. Like the indictment, his pleas are not evidence. The government's charges in the indictment and the defendant's pleas are how a criminal case ends up being decided by you. (Defendant's name)

exhibits, and any facts to which the government and the defendant agree or I tell you to accept as

at trial. It will be up to you to decide what evidence to believe and how much of any witness's testimony to accept or reject.

After you have heard all the evidence on both sides, the government and the defense will each be given time for their final arguments. These arguments are not evidence. After these closing arguments, I will again instruct you on the law you are to use in deciding your verdicts, and then you will go to decide your verdicts.

During the course of the trial, I may ask a question of a witness. If I do, that does not mean I have any opinion about the facts in the case. I am only trying to bring out facts that you may consider. From time to time during the trial, I may also direct your attention to these instructions.

Ordinarily, the attorneys will show you all the legally allowed evidence that is necessary for you to decide your verdicts. However, in rare situations, a juror may have a question that is very important for considering a necessary element of the case. In that situation, the juror may write out a question and give it to the courtroom deputy at the next recess. I will then consider that question with the lawyers. If it is a proper and necessary question, it will be asked. If it is not, I will tell you why and explain why you cannot consider what the answer to the question might be.

If you would like to take notes during the trial, you may. On the other hand, you do not have to take notes. If you decide to take notes, be careful not to get so involved in note taking that you become distracted. Remember that your notes will not necessarily reflect exactly what was said, so you should only use your notes as memory aids. You should not rely on your notes over your independent memory of the evidence. You should also not be overly influenced by the notes of other jurors. If you do take notes leave them in the jury room at night and do not discuss

their contents until I send you to decide your verdicts at the end of the trial.

During the course of the trial, you should not talk with any witness, or with the defendant, or with any of the lawyers at all. Most importantly, during the trial you may not talk about it with anyone else. Also, you may not discuss the evidence in this case with each other until you have gone to the jury room to make your decision at the end of the trial. It is important that you wait until all the evidence is presented and you have again heard my instructions before

session. Whether you are here or away from the court during recess you may not Google, tweet, text message, blog, post or anything else with those gadgets about anything to do with this case. If anyone does, it could cause a mistrial, meaning all of our efforts would have been wasted and we would have to start all over again with a new trial before a new jury. If you were to cause a mistrial by violating these orders, you could have to pay all the costs of this trial and perhaps be ou o d1(t)-2

INSTRUCTION NO. 2

Introduction to Instructions

In any trial there are, in effect, two judges. I am one of the judges; you are the other. I am the judge of the law. You, as jurors, are the judges of the facts.

It is my duty to direct the trial and decide what evidence is proper for you to consider. When I reject evidence, I am saying that evidence may not legally be considered by you. I am not telling you what is true or not true. It is your responsibility to decide that based on the evidence that you can legally consider.

It is also my duty to explain to you the law that you must follow and apply in deciding your verdicts. In explaining the law that you must follow, I will first give you some general instructions that apply in every criminal case—for example, instructions about burden of proof and insights that may help you to judge whether to believe a witness. Then I will give you some specific laws that apply to this case and, finally, I will explain the procedures you should follow when deciding your verdicts. These instructions will be given to you for use during the trial.

INSTRUCTION NO. 3

Duty to Follow Instructions

You, as jurors, are the judges of the facts. But in figuring out what actually happened, it is your sworn duty to follow the law as I explain it to you.

You may not ignore or give special attention to any one instruction or question the wisdom or correctness of any rule I tell you about. You must not substitute or follow your own idea or opinion as to what the law is or should be. It is your duty to apply the law as I explain it to you, regardless of the result.

In your discussions you must make sure no one else on the jury ignores the instructions or attempts to decide the case on anything other than the law that is given to you by me and the evidence that has been presented in this trial. You must remember that we are all committed to equal justice under the law. Matters of race, religious belief, color, nationality, gender, and sexual orientation have no place in this process. To the best of your ability you are to judge others as you would want others to judge you under the law I give you. The very heart of justice is that all apply the same law to the same evidence and leave our personal desires out of it.

You should not read these instructions or anything else I may have said or done as any suggestion as to what your verdicts should be. That is completely up to you.

It is also your duty to base your verdicts only on the evidence, without prejudice or sympathy. That is the promise you make and the oath you take.

INSTRUCTION NO. 4

Presumption of Innocence - Burden of Proof - Reasonable Doubt

The indictment against (Defendant's name) is not evidence of guilt. The defendant is presumed by the law to be innocent. The law does not require (Defendant's name) to prove his innocence or present any evidence at all. As to each count, the government has the burden of proving he is guilty beyond a reasonable doubt, and if it does not, you must find (Defendant's name) not guilty.

Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the defendant's guilt. There are 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. It is only required that the government's proof remove any reasonable doubt of the defendant's guilt. A reasonable doubt is a doubt based on reason and common sense after careful and unbiased consideration of all the evidence in the case. It is a doubt based on the evidence and not on a hunch, a guess, or a whim.

If, based on your consideration of the evidence, you are firmly convinced that (Defendant's name) is guilty of the crime charged, you should find him guilty. If on the other hand, you think there is a real possibility that the government did not prove his guilt, you must give him the benefit of the doubt and find him not guilty.

INSTRUCTION NO. 5

Evidence—Defined

You must make your decision based only on the evidence that you see and hear here in court. Do not let rumors, guesses, or anything else that you may have seen or heard outside of court influence your decision in any way.

The evidence in this case includes only what the witnesses said while they were testifying under oath, the exhibits that I allow into evidence, anything the defendant and the government agree to, and the facts that I judicially notice. Judicial notice is when I accept into evidence well-known facts such as time, date and place, or legal matters like existing government regulations. Judicial notice may not happen in this trial.

Nothing else is evidence. The lawyers' statements and arguments are not evidence. Their questions and objections are not evidence. My rulings are not evidence. And my comments and questions are not evidence.

During the trial, I may not let you hear the answers to some of the questions that the lawyers ask. I may also rule that you cannot see some of the exhibits that the lawyers want you to see. And sometimes I may order you to ignore things that you saw or heard. I may strike things from the record, which means you cannot consider that piece of evidence. Do not even think about it. Do not guess what a witness might have said or what an exhibit might have shown. These things are not evidence, and you are bound by your oath not to let them influence your decision in any way.

INSTRUCTION NO. 6

Evidence—Direct and
Circumstantial—Inferences

Generally speaking, there are two types of evidence. One is direct evidence, such as the testimony of an eyewitness. The other is indirect or circumstantial evidence, that is, a chain of facts which point to the existence or non-existence of other facts.

The law makes no distinction between direct and circumstantial evidence. The law requires that you find the facts in accord with all the evidence in the case, both direct and circumstantial.

An inference is a conclusion that reason and common sense may lead you to make based

INSTRUCTION NO. 7

Credibility of Witnesses

It is your job to decide whether the government has proved (Defendant's name)'s guilt beyond a reasonable doubt. In doing so, you must consider all of the evidence. This does not mean, however, that you must accept all of the evidence as true.

You are the only judges of the credibility or "believability" of each witness and the weight to be given to the witness's testimony. An important part of your job will be making judgments about the testimony of the witnesses who testify in thihon th al(o)2(f)5(th)2(sj ET n.l-6(h)TT n.l

In reaching a conclusion on a particular point or a verdict in this case, do not make any decisions simply because there were more witnesses on one side than on the other.

INSTRUCTION NO. 8

Impeachment by Prior Inconsistencies

INSTRUCTION NO. 9

Defendant's Choice on Testifying

The defendant, (Defendant's name), has the right to testify or not testify and this is a basic right the law respects and protects. If the defendant chooses not to testify, you cannot consider his decision as evidence of guilt. The Constitution of the United States grants to a defendant the right to remain silent and that right is strongly protected. That means the right not to testify, so you cannot use the fact that a defendant does not take the witness stand and testify or call any witnesses as proof that he is guilty. The burden is always on the Government to prove beyond a reasonable doubt each and every significant part of each and every charge, and that burden never shifts to the defendant. If the defendant chooses to testify, you must judge him using the same standards of credibility as you do any other witness. If the defendant chooses not to testify, you may not hold that against him in any way.

INSTRUCTION NO. 10

Accomplice - Informant Testimony – Plea Agreement
Accomplice

An accomplice is someone who joined with another person in committing a crime, willingly and with the same purpose. The government will likely call as one of its witnesses an alleged accomplice and member of the conspiracy, (Accomplice's name). The government has entered into a plea agreement with him, agreeing to fewer charges against him and asking for a lesser sentence. Plea bargaining is lawful, and the rules of this court specifically allow it.

INSTRUCTION NO. 11

Expert Witness

Scientific, technical, or other specialized knowledge may assist you in understanding the evidence or in finding a fact to be true or not true. A witness who has special knowledge, skill, experience, training

INSTRUCTION NO. 13

Introduction to the Charged Crimes

(Defendant's name) has been charged in the indictment with three counts of alleged crimes. Each count charges a separate crime, so you should consider each count, and the evidence related to it, separately. The fact that you may find (Defendant's name) guilty or not guilty of one of the counts should not control your verdict for any other crime charged.

In order for the government to prove that (Defendant's name) committed the alleged crimes, it must prove the elements of each crime beyond a reasonable doubt. I will now tell you what those elements are for each count.

Verdicts must be unanimous, meaning that each and every one of you agrees on each and every verdict. Count 1 of the indictment accuses (Defendant's name) and (Coconspirator's name) of committing several overt acts to help the conspiracy. Based on the Second element above, the government does not have to prove all of these different acts for you to return a guilty verdict on Count 1.

In order to return a guilty verdict, all twelve of you must agree that at least one of the members of the conspiracy committed at least one of the acts listed AND must agree which specific act of the listed acts (Defendant's name) and/or the other members of the conspiracy committed.

INSTRUCTION NO. 15

Count 2: Armed Bank Robbery

(Defendant's name) is charged in Count 2 with a violation of 18 United States Code, Section 2113(a) and (d) and Section 2. This law makes it a crime for a person to rob a bank insured by the federal government through the use of force and violence or intimidation and the use of a dangerous weapon that puts the lives of bank employees or others in jeopardy or to have aided and abetted another person to do so.

To find (Defendant's name) guilty of Armed Bank Robbery, you must be convinced that the government has proved each of the following elements beyond a reasonable doubt:

First: On or about June 17, 2014, (Defendant's name) did knowingly, by the use of force and violence, or by intimidation;

Second: Take from the person or presence of another;

Third: Money belonging to or in the care, custody control, management or possession of Wells Fargo Bank;

Fourth: The monies and deposits of Wells Fargo Bank were then insured by the Federal Deposit Insurance Corporation;

Fifth: During the commission of the above acts, the lives of Wells Fargo Bank employees or others were put in jeopardy by the bank robber(s) by the use of a dangerous weapon;

or,

(Defendant's name) did aid and abet another person who the government proved had committed Armed Bank Robbery based on the five elements above.

The term "dangerous weapon" means (1) an object that could cause death or serious

bodily injury; or (2) an object that could not cause death or serious bodily injury but (a) is a lot like such an object; or (b) was used in a way that made it seem like it was such an object.

If you are convinced that the government has proved all of these elements beyond a reasonable doubt, you should find (Defendant's name) guilty of Armed Bank Robbery. If you have a reasonable doubt about any of these elements, then you must find him not guilty.

INSTRUCTION NO. 16

If you are convinced that the government has proved all of these elements beyond a reasonable doubt, you should find

INSTRUCTION NO. 18

Aiding and Abetting - Accomplice Liability

If you decide that (Defendant's name) did not personally commit Armed Bank Robbery as described in Instruction No. 15 or the lesser crime of Bank Robbery as described in Instruction No. 16, he may still be legally responsible for those crimes as an accomplice, known as aiding and abetting. If an accused person aids, abets, counsels, commands, induces or procures another person to commit a crime, then the law holds that person equally responsible for the acts of other individuals just as though the accused person committed the acts himself. Participation in the crime may be proven by indirect evidence and the level of participation by the accused person may be minimal.

In order to be found guilty as an "aider and abettor", the government must prove:

First: Someone other than (Defendant's name) committed the charged crime;

Second: (Defendant's name) associated himself with the crime;

Third: (Defendant's name) participated in the crime as in something that he wished to have happen; and

Fourth: that he tried through his actions to make the crime successful.

To be guilty of aiding and abetting, (Defendant's name) does not have to do the criminal act, be present when it is done, or know about the details of how it was committed. But, (Defendant's name) having a general feeling that an illegal act may occur or that a crime is happening is not enough for him to be guilty. Similarly, just being at the scene of a crime and knowing that a crime is being committed are also not enough to find him guilty of aiding and abetting.

INSTRUCTION NO. 19

On or About

(Defendant's name) is charged with having committed the crimes "on or about" or "in or about" a certain date. This means that the government must prove beyond a reasonable doubt that the crimes were committed reasonably near the dates charged.

INSTRUCTION NO. 20

"Knowing" -- Defined

The term "knowing," as used in these instructions to describe the alleged state of mind of (Defendant's name), means that he was conscious and aware of his actions, realized what he was doing or what was happening around him, and his actions were not due to ignorance, mistake, or accident.

INSTRUCTION NO. 21

Proof of Knowledge or Intent

The intent of a person or the knowledge that a person has at any given time may not usually be proved directly because there is no way of directly seeing the workings of the human mind. In deciding 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 evidence which may help you in deciding that person's knowledge or intent.

You may infer, but do not have to infer, that a person intends for the natural and probable consequences of any acts he knowingly does. It is entirely up to you, however, to decide what facts to find from the evidence received during this trial.

INSTRUCTION NO. 25

Jury - Deliberations

After the government and the defendant have made their closing arguments and I have read you the final instructions, you will be taken to the jury room so you can make your decisions. You will have a copy of the instructions and verdicts form, and any exhibits I allowed will also be in the jury room for you to review.

When you go to the jury room, you must choose one of you to serve as your Presiding Juror. He or she will direct your discussions and speak for you here in court. You will then talk about the case with your fellow jurors to try to reach agreement. You all must completely agree on each verdict, whether it is guilty or not guilty.

Each of you must decide the case for yourself, but only after you have considered all of the evidence, discussed it with the other jurors, and listened to the views of the other jurors. I suggest how you might want to do this in Instruction No. 26 “Jury - The Deliberations Process.”

One thing you should do in your discussions is to follow these jury instructions and the verdicts form.

To assist you, we have given you a verdicts form. The Presiding Juror will mark the answer agreed to by each and every juror in the spaces on the verdicts form. Then, the Presiding

stand.” It is better, however, not to vote until you have had a full discussion on the issue, otherwise you might lock yourself into a certain view before thinking about the other and possibly more reasonable interpretations of the evidence. Experience has also shown that such early votes often cause disruptive, inefficient

judgment. This is sometimes called “active listening” and it means that you should not listen with only one ear while thinking about a response. Only after you have heard and understood what the other person is saying should you think about a response. Obviously, this means that, unlike TV talk shows, you should try very hard not to interrupt. If one of your members is going on and on, it is the Presiding Juror who should suggest that the point has been made and it is time to hear from someone else.

You each have a right to your own opinion, but you should be open to others. When you focus your attention and best listening skills, others will feel respected and, even while they may disagree, they will respect you. It helps if you are open to the possibility that you might be wrong or at least that you might change your mind about some issues after listening to other views.

Not understanding each other can hurt your efforts. Ask for clarification if you do not understand or if you think others are not talking about the same thing. From time to time the Presiding Juror should set out the items on which you agree and those on which you have not yet agreed.

Even with all your efforts, it is still possible that there may be serious disagreements. If that happens, realize and accept that “getting stuck” is often part of the decision-making process. It is easy to fall into the trap of believing that there is something wrong with someone who is not ready to move on. Thinking that way is not helpful. It can lead to focusing on personalities rather than the issues. It is best to be patient with one another. At such times, moving slower actually ends up being faster. There is a tendency to set deadlines and try to force decisions. Taking a

decide verdicts that leave each of you satisfied that you have achieved justice.