

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

CRIMINAL NO. 08-20314

v.

ISSAM HAMAMA,

Defendant.
_____ /

DEFENDANT'S ANNOTATED PROPOSED JURY INSTRUCTIONS

Defendant, Issam Hamama, by and through its counsel of record, Haytham Faraj hereby respectfully requests that the Court include the attached instructions in its charge to the jury.

Dated:

Respectfully submitted,

Haytham Faraj
Counsel for Defendant

No.	Title	Source	Section
***	PRELIMINARY INSTRUCTIONS	***	***
A	Presumption of Innocence, Burden of Proof, Reasonable Doubt	Sixth Circuit Criminal Pattern Jury Instructions Section Ch. 1 General Principles	1.03

No.	Title	Source	Section
B	Credibility of Witnesses	Sixth Cir. Criminal Pattern Jury Instructions Section Ch. 1 General Principles	1.07
***	INSTRUCTIONS IN THE COURSE OF TRIAL	***	***
C	Opinion Testimony	Sixth Cir. Criminal Pattern Jury Instructions Section Ch. 7 Special Evidentiary Matters	7.03
D	Testimony of a Paid Informant	Sixth Cir. Criminal Pattern Jury Instructions Section Ch. 7 Special Evidentiary Matters	7.06 A
E	Testimony Under Grant of Immunity or Reduced Criminal Liability	Sixth Cir. Criminal Pattern Jury Instructions Section Ch. 7 Special Evidentiary Matters	7.07
F	Character and Reputation of Defendant	Sixth Cir. Criminal Pattern Jury Instructions Section Ch. 7 Special Evidentiary Matters	7.09
***	FINAL JURY INSTRUCTIONS	***	***
1	Conspiracy to Commit an Offense -- Basic Elements	Sixth Cir. Criminal Pattern Jury Instructions Section Ch. 3 Conspiracy	3.01A
2	Defendant's Connection to the Conspiracy	Sixth Cir. Criminal Pattern Jury Instructions Section Ch. 3 Conspiracy	3.03
3	Overt Acts	Sixth Cir. Criminal Pattern Jury Instructions Section Ch. 3 Conspiracy	3.04
4	Separate Consideration -- Single Defendant Charged with Multiple Crimes	Sixth Cir. Criminal Pattern Jury Instructions Section Ch. 2 Defining the Crime	2.01A
***	Knowingly - NO GENERAL INSTRUCTION RECOMMENDED	Sixth Cir. Criminal Pattern Jury Instructions Section Ch. 2 Defining the Crime	2.06

No.	Title	Source	Section
6	Elements of Count One: Conspiracy to Commit Offenses Against the United States by Acting As an Agent of a Foreign Government Without Prior Notification to the Attorney General of the United States in Violation of 18 U.S.C. § § 371 and 951(a).		
7	Elements of Count Two, Three and Four: Making a False Statement in a Matter within the Jurisdiction of the United States Government (18 U.S.C. § 1001 (a)(2))	Sixth Cir. Criminal Pattern Jury Instructions Section Ch. 13 False Statements to the United States Government	13.02
8	Elements of Count Two, Three and Four: Making or Using a False Writing in a Matter within the Jurisdiction of the United States Government (18 U.S.C. § 1001 (a)(3))	Sixth Cir. Criminal Pattern Jury Instructions Section Ch. 13 False Statements to the United States Government	13.03

PRELIMINARY INSTRUCTIONS

The parties respectfully request that the Court give the following instruction in addition to the preliminary instructions usually given by the Court.

COURT'S INSTRUCTION NO. _____

PROPOSED INSTRUCTION NO. A

(1) As you know, the defendant has pleaded not guilty to the crime charged in the indictment. The indictment is not any evidence at all of guilt. It is just the formal way that the government tells the defendant what crime he is accused of committing. It does not even raise any suspicion of guilt.

(2) Instead, the defendant starts the trial with a clean slate, with no evidence at all against him, and the law presumes that he is innocent. This presumption of innocence stays with him unless the government presents evidence here in court that overcomes the presumption, and convinces you beyond a reasonable doubt that he is guilty.

(3) This means that the defendant has no obligation to present any evidence at all, or to prove to you in any way that he is innocent. It is up to the government to prove that he is guilty, and this burden stays on the government from start to finish. You must find the defendant not guilty unless the government convinces you beyond a reasonable doubt that he is guilty.

(4) The government must prove every element of the crime charged beyond a reasonable doubt. Proof beyond a reasonable doubt does not mean proof beyond all possible doubt. Possible doubts or doubts based purely on speculation are not reasonable doubts. A reasonable doubt is a doubt based on reason and common sense. It may arise from the evidence, the lack of evidence, or the nature of the evidence.

(5) Proof beyond a reasonable doubt means proof which is so convincing that you would not hesitate to rely and act on it in making the most important decisions in your own lives. If you are convinced that the government has proved the defendant guilty beyond a reasonable doubt, say so by returning a guilty verdict. If you are not convinced, say so by returning a not guilty verdict.

COURT'S INSTRUCTION NO. _____

PROPOSED INSTRUCTION NO. B

(1) Another part of your job as jurors is to decide how credible or believable each witness was. This is your job, not mine. It is up to you to decide if a witness's testimony was believable, and how much weight you think it deserves. You are free to believe everything that a witness said, or only part of it, or none of it at all. But you should act reasonably and carefully in making these decisions.

(2) Let me suggest some things for you to consider in evaluating each witness's testimony.

(A) Ask yourself if the witness was able to clearly see or hear the events. Sometimes even an honest witness may not have been able to see or hear what was happening, and may make a mistake.

(B) Ask yourself how good the witness's memory seemed to be. Did the witness seem able to accurately remember what happened?

(C) Ask yourself if there was anything else that may have interfered with the witness's ability to perceive or remember the events.

(D) Ask yourself how the witness acted while testifying. Did the witness appear honest? Or did the witness appear to be lying?

(E) Ask yourself if the witness had any relationship to the government or the defendant, or anything to gain or lose from the case, that might influence the witness's testimony. Ask yourself if the witness had any bias, or prejudice, or reason for testifying that might cause the witness to lie or to slant the testimony in favor of one side or the other.

[(F) Ask yourself if the witness testified inconsistently while on the witness stand, or if the witness said or did something (or failed to say or do something) at any other time that is inconsistent with what the witness said while testifying. If you believe that the witness was inconsistent, ask yourself if this makes the witness's testimony less believable. Sometimes it may; other times it may not. Consider whether the inconsistency was about something important, or about some unimportant detail. Ask yourself if it seemed like an innocent mistake, or if it seemed deliberate.]

(G) And ask yourself how believable the witness's testimony was in light of all the other evidence. Was the witness's testimony supported or contradicted by other evidence that you found believable? If you believe that a witness's testimony was contradicted by other evidence, remember that people sometimes forget things, and that even two honest people who witness the same event may not describe it exactly the same way.

(3) These are only some of the things that you may consider in deciding how believable each witness was. You may also consider other things that you think shed some light on the witness's believability. Use your common sense and your everyday experience in dealing with other people. And then decide what testimony you believe, and how much weight you think it deserves.

Use Note

Bracketed paragraph (2)(F) should be included when a witness has testified inconsistently, or has said or done something at some other time that is inconsistent with the witness's testimony. It should be tailored to the particular kind of inconsistency (i.e. either inconsistent testimony on the stand, or inconsistent out-of-court statements or conduct, or both). The bracketed failure-to-act language should be included when appropriate.

INSTRUCTIONS IN THE COURSE OF TRIAL

The parties respectfully request that the Court give the following instructions as applicable in addition to the instructions during the course of the trial usually given by the Court.

COURT'S INSTRUCTION NO. _____

PROPOSED INSTRUCTION NO. C

- (1) You have heard the testimony of _____, who testified as an opinion witness.
- (2) You do not have to accept _____'s opinion. In deciding how much weight to give it, you should consider the witness's qualifications and how he reached his conclusions. Also consider the other factors discussed in these instructions for weighing the credibility of witnesses.
- (3) Remember that you alone decide how much of a witness's testimony to believe, and how much weight it deserves.

COURT'S INSTRUCTION NO. _____

PROPOSED INSTRUCTION NO. D

(1) You have heard the testimony of _____. You have also heard that he received money [or _____] from the government in exchange for providing information.

(2) The use of paid informants is common and permissible. But you should consider _____'s testimony with more caution than the testimony of other witnesses. Consider whether his testimony may have been influenced by what the government gave him.

(3) Do not convict the defendant based on the unsupported testimony of such a witness, standing alone, unless you believe his testimony beyond a reasonable doubt.

COURT'S INSTRUCTION NO. _____

PROPOSED INSTRUCTION NO. E

(1) You have heard the testimony of _____. You have also heard that the government has promised him that [he will not be prosecuted for _____] [he will _____] in exchange for his cooperation.

(2) It is permissible for the government to make such a promise. But you should consider _____'s testimony with more caution than the testimony of other witnesses. Consider whether his testimony may have been influenced by the government's promise.

(3) Do not convict the defendant based on the unsupported testimony of such a witness, standing alone, unless you believe his testimony beyond a reasonable doubt.

COURT'S INSTRUCTION NO. _____

PROPOSED INSTRUCTION NO. F

You have heard testimony about the defendant's good character. You should consider this testimony, along with all the other evidence, in deciding if the government has proved beyond a reasonable doubt that he committed the crime charged.

FINAL JURY INSTRUCTIONS

The parties respectfully request that the Court give the following final jury instructions.

COURT'S INSTRUCTION NO. ____

PROPOSED INSTRUCTION NO. 1

(1) Count ___ of the indictment accuses the defendants of a conspiracy to commit the crime of _____ in violation of federal law. It is a crime for two or more persons to conspire, or agree, to commit a criminal act, even if they never actually achieve their goal.

(2) A conspiracy is a kind of criminal partnership. For you to find any one of the defendants guilty of the conspiracy charge, the government must prove each and every one of the following elements beyond a reasonable doubt:

(A) First, that two or more persons conspired, or agreed, to commit the crime of _____.

(B) Second, that the defendant knowingly and voluntarily joined the conspiracy.

(C) And third, that a member of the conspiracy did one of the overt acts described in the indictment for the purpose of advancing or helping the conspiracy.

(3) You must be convinced that the government has proved all of these elements beyond a reasonable doubt in order to find any one of these defendants guilty of the conspiracy charge.

COURT'S INSTRUCTION NO. _____

PROPOSED INSTRUCTION NO. 2

(1) If you are convinced that there was a criminal agreement, then you must decide whether the government has proved that the defendants knowingly and voluntarily joined that agreement. You must consider each defendant separately in this regard. To convict any defendant, the government must prove that he knew the conspiracy's main purpose, and that he voluntarily joined it intending to help advance or achieve its goals.

(2) This does not require proof that a defendant knew everything about the conspiracy, or everyone else involved, or that he was a member of it from the very beginning. Nor does it require proof that a defendant played a major role in the conspiracy, or that his connection to it was substantial. A slight role or connection may be enough.

(3) But proof that a defendant simply knew about a conspiracy, or was present at times, or associated with members of the group, is not enough, even if he approved of what was happening or did not object to it. Similarly, just because a defendant may have done something that happened to help a conspiracy does not necessarily make him a conspirator. These are all things that you may consider in deciding whether the government has proved that a defendant joined a conspiracy. But without more they are not enough.

(4) What the government must prove is that a defendant knew the conspiracy's main purpose, and that he voluntarily joined it intending to help advance or achieve its goals. This is essential.

(5) A defendant's knowledge can be proved indirectly by facts and circumstances which lead to a conclusion that he knew the conspiracy's main purpose. But it is up to the government to convince you that such facts and circumstances existed in this particular case.

COURT'S INSTRUCTION NO. _____

PROPOSED INSTRUCTION NO. 3

(1) The third element that the government must prove is that a member of the conspiracy did one of the overt acts described in the indictment for the purpose of advancing or helping the conspiracy.

(2) The indictment lists overt acts. The government does not have to prove that all these acts were committed, or that any of these acts were themselves illegal.

(3) But the government must prove that at least one of these acts was committed by a member of the conspiracy, and that it was committed for the purpose of advancing or helping the conspiracy. This is essential.

[(4) One more thing about overt acts. There is a limit on how much time the government has to obtain an indictment. This is called the statute of limitations. For you to return a guilty verdict on the conspiracy charge, the government must convince you beyond a reasonable doubt that at least one overt act was committed for the purpose of advancing or helping the conspiracy after.]

COURT'S INSTRUCTION NO. _____

PROPOSED INSTRUCTION NO. 4

(1) The defendant has been charged with several crimes. The number of charges is no evidence of guilt, and this should not influence your decision in any way. It is your duty to separately consider the evidence that relates to each charge, and to return a separate verdict for each one. For each charge, you must decide whether the government has presented proof beyond a reasonable doubt that the defendant is guilty of that particular charge.

(2) Your decision on one charge, whether it is guilty or not guilty, should not influence your decision on any of the other charges.

COURT'S INSTRUCTION NO. _____

PROPOSED INSTRUCTION NO. 5

Conspiracy to Commit Offenses Against the United States by Acting As an Agent of a Foreign Government Without Prior Notification to the Attorney General of the United States in Violation of 18 U.S.C. § § 371 and 951(a).]

[I am going to review your proposed instruction for this count and get back to you.]

COURT'S INSTRUCTION NO. _____

PROPOSED INSTRUCTION NO. 6

(1) The defendant is charged with the offense of making a false [statement] [representation] in a matter within the jurisdiction of the United States government. For you to find the defendant guilty of this offense, you must find that the government has proved each and every one of the following elements beyond a reasonable doubt:

(A) First, that the defendant made a [statement] [representation];

(B) Second, that the statement was [false] [fictitious] [fraudulent];

(C) Third, that the [statement] [representation] was material;

(D) Fourth, that the defendant acted knowingly and willfully; and

(E) Fifth, that the statement pertained to a matter within the jurisdiction of the [executive] [legislative] [judicial] branch of the United States government.

(2) Now I will give you more detailed instructions on some of these terms.

(A) A statement is “false” or “fictitious” if it was untrue when it was made, and the defendant knew it was untrue at that time. A statement is “fraudulent” if it was untrue when it was made, the defendant knew it was untrue at that time, and the defendant intended to deceive.

(B) A “material” statement or representation is one that has the natural tendency to influence or is capable of influencing a decision of [*insert name of government entity*].

(C) An act is done “knowingly and willfully” if it is done voluntarily and intentionally, and not because of mistake or some other innocent reason.

(D) A matter is “within the jurisdiction of the [executive] [legislative] [judicial] branch of the United States government” if [*insert name of government entity*] has the power to exercise authority in that matter.

(3) [It is not necessary that the government prove [that the defendant knew the matter was within the jurisdiction of the United States government] [that the statements were made directly to, or even received by, the United States government]].

(4) If you are convinced that the government has proved all of the elements, say so by returning a guilty verdict on this charge. If you have a reasonable doubt about any one of the elements, then you must find the defendant not guilty of this charge.

Sixth Cir. Criminal Pattern Jury Instructions Section Ch. 13 False Statements to the United States Government No. 13.02 (2009) [Making a False Statement in a Matter within the Jurisdiction of the United States Government (18 U.S.C. § 1001 (a)(2))].

COURT'S INSTRUCTION NO. _____

PROPOSED INSTRUCTION NO. 7

(1) The defendant is charged with the offense of making or using a false writing or document in a matter within the jurisdiction of the United States government. For you to find the defendant guilty of this offense, you must find that the government has proved each and every one of the following elements beyond a reasonable doubt:

(A) First, that the defendant [made] [used] a false [writing] [document];

(B) Second, that the [writing] [document] contained a [statement] [entry] that was [false] [fictitious] [fraudulent];

(C) Third, that the [statement] [entry] was material;

(D) Fourth, that the defendant acted knowingly and willfully; and

(E) Fifth, that the [writing] [document] pertained to a matter within the jurisdiction of the [executive] [legislative] [judicial] branch of the United States government.

(2) Now I will give you more detailed instructions on some of these terms.

(A) A statement is “false” or “fictitious” if it was untrue when it was made, and the defendant knew it was untrue at that time. A statement is “fraudulent” if it was untrue when it was made, the defendant knew it was untrue at that time, and the defendant intended to deceive.

(B) A “material” statement or entry is one that has the natural tendency to influence or is capable of influencing a decision of [*insert name of government entity*].

(C) An act is done “knowingly and willfully” if it is done voluntarily and intentionally, and not because of mistake or some other innocent reason.

(D) A matter is “within the jurisdiction of the [executive] [legislative] [judicial] branch of the United States government” if [*insert name of government entity*] has the power to exercise authority in that matter.

(3) [It is not necessary that the government prove [that the defendant knew the matter was within the jurisdiction of the United States government] [that the statements were made directly to, or even received by, the United States government]].

(4) If you are convinced that the government has proved all of the elements, say so by returning a guilty verdict on this charge. If you have a reasonable doubt about any one of the elements, then you must find the defendant not guilty of this charge.

Sixth Cir. Criminal Pattern Jury Instructions Section Ch. 13 False Statements to the United States Government No. 13.03 (2009) [Making or Using a False Writing in a Matter within the Jurisdiction of the United States Government (18 U.S.C. § 1001 (a)(3))].