

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v.

JUSTIN J. WATERHOUSE,

Defendant.

FINAL PRETRIAL
CONFERENCE ORDER

12-cr-64-bbc

On January 3, 2014, this court held the final pretrial conference. Defendant did not participate personally but was represented by his attorney, Kirk Obear. The government was represented by Assistant United States Attorneys Kevin Burke and Paul Connell.

Prior to the hearing, the court circulated draft voir dire questions and jury instructions (dkt. 28). Prior to the hearing, the government proposed some changes to the voir dire's statement of the case and to the jury instructions regarding the elements of the crimes charged. (*see* dkts. 31 and 53). At the hearing, we reached consensus on the voir dire and the proposed changes to the instructions, although the court then allowed the parties until Monday, January 6, 2013, to submit any proposed instruction on how to define "conversion" to the jury. On January 6, the government submitted its proposed additional/replacement instructions for Count 1. *See* dkt. 54. The court has incorporated the government's proposed changes *and* has made additional changes to the related instructions in an attempt to make all of this as clear as possible for the jury. The parties should carefully review the new unanimity instruction and the new elements instruction for Count 1 and then make their record at the final hearing.

Copies of the voir dire, jury instruction and the verdict form, are attached to this order.

Prior to the final pretrial conference, the government filed three motions in limine, *see* dkts. 32-34, seeking to exclude evidence or argument about reasonable doubt, possible penalties,

and entrapment. Waterhouse, by counsel, did not oppose any of these motions. The parties had not other in limine issues to bring to the court's attention.

The parties have predicted that the trial could last three days. Given the court's intent to begin its civil jury trial on Wednesday, January 15, 2014, the parties are forewarned that the court will keep the trial in this case moving briskly. Two alternate jurors will suffice. The parties are aware that they must present their evidence using the court's ELMO system. The parties had no other matters to bring to the court's attention.

Entered this 7th day of January, 2014.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge

Voir Dire: United States v. Waterhouse, 12-cr-64-wmc

Statement of the case: This is a criminal case, in which the defendant, Justin Waterhouse, is charged with stealing and unlawfully converting, selling and conveying to other people night vision monoculars and gun sights from an Army Reserve Center in Eau Claire. The defendant has entered a plea of not guilty to the charges against him.

Have any of you heard of this case before today? Would this affect your ability to serve impartially as a juror in this case?

1. Is there anything about the nature of the charges in this case that might affect your ability to be impartial in this case?

2. Scheduling: this case will begin today and could last until this Wednesday. Are any of you actually unable to sit as jurors because of this schedule?

3. The court reads Pattern Jury Instructions of the Seventh Circuit:

The defendant is presumed to be innocent of the charges against him. This presumption remains with the defendant throughout every stage of the trial and during your deliberations on the verdict, and is not overcome unless from all the evidence in the case you are convinced beyond a reasonable doubt that the defendant is guilty.

The government has the burden of proving the guilt of the defendant beyond a reasonable doubt, and this burden remains on the government throughout the case. The defendant is not required to prove his innocence or to produce any evidence.

The defendant has an absolute right not to testify. The fact that the defendant does not testify cannot be considered by you in any way in arriving at your verdict.

Would any of you be unable or unwilling to follow these instructions?

4. Ask counsel to introduce themselves, the defendant and the case agent. Ask whether jurors know them.

5. Invite each juror, in turn, to rise, and provide the following information:

Name, age, and city or town of residence.

Marital status and number of children, if any.

Current occupation (former if retired).

Current (or former) occupation of your spouse and any adult children.

Any military service, including branch, rank and approximate date of discharge.

Level of education, and major areas of study, if any.

Memberships in any groups or organizations.

Hobbies and leisure-time activities.

Favorite types of reading material.

Favorite types of television shows.

Whether you regularly listen to talk radio, and if so, to which programs.

Whether you regularly use the internet to visit sites other than e-mail or personal business, and if so, what types of sites you visit most often.

Whether you have bumper stickers on your vehicle and what they say.

6. Do any of you in the jury box know each other from before today?

7. Other than what you already have told us, have any of you, your family or close friends ever worked been a member of the Army Reserve or worked with reservists? Would this affect your ability to be impartial in this case?

8. Have any of you, your relatives, or close friends ever been accused of, or convicted of any criminal offense? [*Sidebar if necessary*]. Would this affect your ability to be impartial in this case?

9. Do any of you, by virtue of past dealings with the United States government, or for any other reason, have any bias for or against the government in a criminal case?

10. Have any of you, your relatives, or close friends ever worked for the local, county, state, or federal government? Would this affect your ability to be impartial in this case?

11. Have any of you, your relatives, or close friends ever worked for, or had other professional contact with any law enforcement, investigative or security company or agency, or any prison? Would this affect your ability to be impartial in this case?

12. Would any of you judge the credibility of a witness who was a law enforcement officer or government employee differently from other witnesses solely because of his or her official position?

13. Would any of you judge the credibility of a witness who had been convicted of a crime in the past differently from other witnesses solely because of this prior conviction?

14. If the defendant were to choose to testify, would any of you judge his credibility differently from other witnesses solely because it was the defendant who was testifying?

15. Have any of you, your relatives, or close friends ever been the victim of any burglary, theft or robbery, at home or at work? Would this affect your ability to be impartial in this case?

16. Have any of you, your relatives, or close friends ever been a witness in a trial? Is there anything about this experience that might affect your ability to be impartial in this case?

17. Have any of you, your relatives, or close friends ever had any negative experience with any lawyer, any court, or any legal proceeding that would affect your ability to be impartial in this case?

18. How many of you have served previously as a juror in another case? Please tell us in which court you served, approximately when, the type of cases you heard, whether you were foreperson, and the verdicts.

19. If at the conclusion of the trial you were to be convinced of the defendant's guilt beyond a reasonable doubt, is there any one of you who would not, or could not, return a verdict of guilty?

20. If at the conclusion of the trial you were not to be convinced of the defendant's guilt beyond a reasonable doubt, is there any one of you who would not, or could not, return a verdict of not guilty?

21. The court will instruct you on the law to be applied in this case. You are required to accept and follow the court's instructions in that regard, even though you may disagree with the law. Is there any one of you who cannot accept this requirement?

22. Do you know of any reason whatever, either suggested by these questions or otherwise, why you could not sit as a trial juror with absolute impartiality to all the parties in this case?

JUROR BACKGROUND INFORMATION

When asked to do so by the court, please stand and provide the following information about yourself:

Name, age, and city or town of residence.

Marital status and number of children, if any.

Current occupation (former if retired).

Current (or former) occupation of your spouse and any adult children.

Any military service, including branch, rank and approximate date of discharge.

Level of education, and major areas of study, if any.

Memberships in any groups or organizations.

Hobbies and leisure-time activities.

Favorite types of reading material.

Favorite types of television shows.

Whether you regularly listen to talk radio, and if so, to which programs.

Whether you regularly use the internet to visit sites other than e-mail or personal business, and if so, what types of sites you visit most often.

Whether you have any bumper stickers on your vehicle and what they say.

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JURY INSTRUCTIONS

12-cr-64-wmc

I. INTRODUCTORY INSTRUCTIONS

Members of the jury, we are about to begin the trial of the case. Before it begins, I want to tell you how the trial will proceed and how you should conduct yourselves during the trial.

Your Duties as Jurors

As jurors, you have two duties. Your first duty is to decide the facts from the evidence that you will see and hear in this court. This is your job, not my job or anyone else's.

Your second duty will be to take the law that I will give you at the end of the case and apply it to the facts to decide if the government has proved the defendant guilty beyond a reasonable doubt.

You must perform these duties fairly and impartially. Do not let sympathy, prejudice, fear or public opinion influence you. Do not let any person's race, color, religion, national ancestry or gender influence you.

Nothing that I say or do during the trial is meant to indicate any opinion by me about what the facts are or about what your verdict should be.

The Criminal Charge

The charges against the defendant are in a document called an indictment. You will have a copy of the charges during your deliberations.

The indictment in this case charges the defendant with stealing and unlawfully converting, selling and conveying to other people night vision monoculars and gun sights from an Army Reserve Center in Eau Claire. The indictment is simply the formal way of stating what crime the defendant is accused of committing. It is not evidence that the defendant is guilty and it should not raise even a suspicion of guilt.

The Defendant is Presumed Innocent

The defendant is presumed innocent of the charges. This presumption stays with the defendant throughout the case. It is not overcome unless from all the evidence in the case, you are convinced beyond a reasonable doubt that the defendant is guilty as charged.

The government has the burden of proving the defendant's guilt beyond a reasonable doubt. This burden stays with the government throughout the case. The defendant is never required to prove his innocence. He is not required to produce any evidence at all.

How the Trial Will Proceed

First, the Assistant United States Attorney will make an opening statement outlining the government's case. Immediately after, defendant's attorney will make an opening statement outlining defendant's case. Keep in mind that what is said in opening statements is not evidence; it is simply a guide to help you understand what each party expects the evidence to show.

Second, after the opening statements, the government will introduce evidence in support of the charges. At the conclusion of the government's case, the defendant may

introduce evidence. The defendant is not required to introduce any evidence or to call any witnesses. If the defendant introduces evidence, the government may then introduce rebuttal evidence.

Third, after the evidence is presented, the lawyers will make closing arguments explaining what they believe the evidence has shown and what inferences you should draw from the evidence. What is said in closing argument is not evidence. Because the government has the burden of proof, the Assistant United States Attorney has the right to give the first closing argument and to make a short rebuttal argument after the defendant's closing argument.

Fourth, I will instruct you on the law that you are to apply in reaching your verdict.

Fifth, you will retire to the jury room and begin your deliberations.

The trial day will run from 9:00 a.m. until 5:30 p.m. You will have at least an hour for lunch and two additional short breaks, one in the morning and one in the afternoon.

Notetaking

The clerk will give each of you a notepad and pencil for taking notes. This does not mean you have to take notes; take them only if you want to and if you think that they will help you remember the evidence when you are deliberating. Do not let notetaking interfere with your important duties of listening carefully to all of the evidence and of evaluating the credibility of the witnesses. Just because someone has written something down, this does not mean that the written note is more accurate than another juror's mental recollection of the same thing. No one of you is the "secretary" for the jury, responsible for recording evidence. Each of you is responsible for recalling the testimony and the other evidence.

Although you can see that this trial is being recorded by a court reporter, you should not expect to be able to use trial transcripts in your deliberations. You will have to rely on your own memories.

No Communication During the Trial

During recesses you should keep in mind the following instructions:

First, do not discuss the case either among yourselves or with anyone else during the course of the trial. The parties have a right to expect that you will keep an open mind throughout the trial. You should not reach any conclusions about this case until you have heard all of the evidence, you have heard the lawyers' closing arguments, you have received my instructions on the law, and you have retired to deliberate with the other members of the jury about your verdict.

I must warn you, in particular, against commenting about the trial in an e-mail or a blog or Twitter. There have been news accounts recently about cases that have had to be re-tried because a member of the jury communicated electronically about the case during the trial. You can imagine what this would mean in the cost of a re-trial, the inconvenience to your fellow jurors whose work would have gone for nothing and the stress experienced by the defendant.

Second, do not permit any third person to discuss the case in your presence. If anyone tries to talk to you despite your telling him not to, report that fact to the court as soon as you are able. Do not discuss the event with your fellow jurors or discuss with them any other fact that you believe you should bring to the attention of the court.

Third, although it is a normal human tendency to talk with people with whom one is thrown in contact, please do not talk to any of the parties or their attorneys or the witnesses. By this I mean not only do not talk about the case, but do not talk at all, even

to pass the time of day. This is the only way the parties can be sure of the absolute fairness and impartiality they are entitled to expect from you as jurors.

Fourth, do not read about the case on the Internet, in newspapers, or listen to radio or television broadcasts about the trial. If a headline catches your eye, do not examine the article further. Media accounts may be inaccurate and may contain matters that are not proper for your consideration. You must base your verdict solely on the evidence produced in court.

Fifth, no matter how interested you may become in the facts of the case, you must not do any independent research, investigation or experimentation. Don't look up materials on the internet or in other sources.

How To Consider the Evidence

You must make your decision in this case based only on the evidence that you see and hear in this court. Do not consider anything you may see or hear outside of court.

The evidence consists the testimony of the witnesses, the exhibits admitted in evidence and stipulations. A stipulation is an agreement between both sides that certain facts are true.

Sometimes during a trial I take judicial notice of certain facts that may be regarded as matters of common knowledge. You may accept those facts as proved, but you are not required to do so.

Nothing else is evidence. The lawyers' statements and arguments are not evidence. If what a lawyer says is different from the evidence, the evidence is what counts. The lawyers' questions and objections likewise are not evidence. A lawyer has a duty to object if he thinks a question is improper. If I sustain an objection to a question asked by a lawyer, then you must not speculate on what the answer might have been.

If during the trial I strike a witness's answer to a question or strike an exhibit from the record, or If I tell you to disregard something, then these things are not evidence and you may not consider them.

It is proper for a lawyer to interview any witness in preparation for trial.

Part of your job as jurors is to decide how believable each witness is, and how much weight to give each witness's testimony. Some factors you may consider are: the witness's age, intelligence, and memory; the witness's ability and opportunity to see, hear or know the things that the witness testified about; the witness's demeanor while testifying; whether the witness had any bias, prejudice or other reason to lie or to slant his or her testimony; inconsistent statements or conduct by the witness; and the believability of the witness's testimony in light of the other evidence presented. You may also consider any other factors that shed light on the believability of each witness's testimony.

The defendant has an absolute right not to testify during this trial. You must not consider in any way the fact that he may choose not to testify. You should not even discuss it in your deliberations.

Give the evidence whatever weight you believe it deserves. Use your common sense in weighing the evidence, and consider the evidence in light of your own every day experience. You are allowed to draw reasonable inferences from facts. In other words, you may look at one fact and conclude from it that another fact exists. Any inferences you make must be reasonable and must be based on the evidence in the case.

You may have heard the terms “direct evidence” and “circumstantial evidence.” Direct evidence is evidence that, if you believe it, directly proves a fact. Circumstantial evidence is evidence that indirectly proves a fact.

For example, direct evidence that it rained last Friday would be testimony from a witness who tells you that she walked through the rainstorm. Circumstantial evidence that it rained last Friday would be testimony from a witness who saw other people’s wet umbrellas drying in the foyer that day.

You are to consider both direct and circumstantial evidence. The law does not say that one is better than the other. It is up to you to decide how much weight to give to any evidence, whether direct or circumstantial.

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POST TRIAL
JURY INSTRUCTIONS

12-cr-64-wmc

Members of the jury, you have seen and heard all the evidence and the arguments of the attorneys. Now I will instruct you on the law.

CONSIDERATION OF THE EVIDENCE

All of the introductory instructions that I gave you at the beginning of this trial still are in effect. I will give you copies of those instructions to take back to the jury room with you.

You have received evidence of a statement said to be made by the defendant to _____ . You must decide whether the defendant did make the statement. If you find that the defendant did make the statement, then you must decide what weight, if any, you believe the statement deserves. In making this decision, you should consider all matters in evidence having to do with the statement, including those concerning the defendant himself, and the circumstances under which the statement was made.

In deciding the believability of witnesses, you should judge defendant's testimony in the same way as you judge the testimony of any other witness.

The defendant has an absolute right not to testify. In arriving at your verdict, you must not consider the fact that the defendant did not testify.

You have heard evidence of acts of the defendant other than those charged in the indictment. Specifically, _____. You may consider this evidence only on the questions of _____. You should consider this evidence only for this limited purpose.

You have heard evidence that _____ have been convicted of crimes. You may consider this evidence only in deciding whether the testimony of any of these witnesses is truthful in whole, in part, or not at all. You may not consider this evidence for any other purpose.

You have heard evidence that the defendant has been convicted of crimes. You may consider this evidence only in deciding whether the defendant's testimony is truthful in whole, in part, or not at all. You may not consider it for any other purpose. A conviction of another crime is not evidence of the defendant's guilt of the crime for which the defendant now is charged.

You have heard [reputation/opinion] evidence about the character trait of _____ for truthfulness [or untruthfulness]. You should consider this evidence in deciding the weight that you will give to _____'s testimony.

You have heard [reputation and/or opinion] evidence about the defendant's character trait for [truthfulness, peacefulness, etc]. You should consider character evidence together with all the other evidence in the case and in the same way.

You have heard evidence that before the trial, witnesses made statements that may be inconsistent with their testimony here in court. If you find that it is inconsistent, you may consider the earlier statement only in deciding the truthfulness and accuracy of that witness's testimony in this trial. You may not use it as evidence of the truth of the matters contained in that prior statement. If that statement was made under oath, you may also consider it as evidence of the truth of the matters contained in that prior statement.

A statement made by the defendant before trial that is inconsistent with the defendant's testimony here in court may be used by you as evidence of the truth of the matters contained in it, and also in deciding the truthfulness and accuracy of the defendant's testimony in this trial.

_____ has admitted lying under oath. You may give his testimony such weight as you believe it deserves, keeping in mind that it must be considered with caution and great care.

You have heard testimony that _____ have received benefits from the government in connection with this case. Specifically, _____. You may give the testimony of these witnesses such weight as you believe it deserves, keeping in mind that it must be considered with caution and great care.

You have heard testimony from _____ who each stated that he or she was involved in the commission of the alleged crime charged against the defendant. You may give the testimony of these witnesses such weight as you believe it deserves, keeping in mind that it must be considered with caution and great care.

The witnesses _____ have pleaded guilty to a crime arising out of the same allegations for which the defendant is now on trial. You may give the testimony of these witnesses such weight as you believe it deserves, keeping in mind that it must be considered with caution and great care. Moreover, the guilty pleas of these defendants cannot to be considered as evidence against the defendant[s] on trial now.

The witnesses _____ have received immunity; that is, a promise from the government that any testimony or other information he or she provided would not be used against him in a criminal case. You may give the testimony of these witnesses such weight as you believe it deserves, keeping in mind that it must be considered with caution and great care.

You must consider with caution and great care the testimony of any witness who is currently addicted to drugs. It is up to you to determine whether the testimony of a drug addict has been affect by drug use or the need for drugs.

The witnesses _____ gave opinions about matters requiring special knowledge or skill. You should judge this testimony in the same way that you judge the testimony of any other witness. The fact that such a person has given an opinion does not mean that you are required to accept it. Give the testimony whatever weight you think it deserves, considering the reasons given for the opinion, the witness' qualifications and all of the other evidence in the case.

Certain summaries are in evidence. They truly and accurately summarize the contents of voluminous books, records or documents, and should be considered together with and in the same way as all other evidence in the case.

Certain summaries are in evidence. Their accuracy has been challenged by the defendant. Thus, the original materials upon which the exhibits are based have also been admitted into evidence so that you may determine whether the summaries are accurate.

You have heard recorded conversations. These recorded conversations are proper evidence and you may consider them, just as any other evidence. When the recordings were played during the trial, you were furnished transcripts of the recorded conversations prepared by government agents. The recordings are the evidence, and the transcripts were provided to you only as a guide to help you follow as you listen to the recordings. The transcripts are not evidence of what was actually said or who said it. It is up to you to decide whether the transcripts correctly reflect what was said and who said it. If you noticed any difference between what you heard on the recordings and what you read in the transcripts, you must rely on what you heard, not what you read. And if after careful listening, you could not hear or understand certain parts of the recordings, you must ignore the transcripts as far as those parts are concerned.

THE INDICTMENT

The indictment in this case is the formal method of accusing the defendant of offenses and placing the defendant on trial. It is not evidence against the defendant and it does not create any inference of guilt.

The defendant is charged in the indictment as follows:

COUNT 1

On or about February 5, 2012, in the Western District of Wisconsin, the defendant, Justin J. Waterhouse, knowingly stole and converted to his own use, things of value belonging to the United States, specifically, night vision monoculars and gun sights with an aggregate value in excess of \$1,000.00, intending to deprive the United States the use and benefit of such property.

COUNT 2

Between on or about February 15, 2012, and April 23, 2012, in the Western District of Wisconsin, the defendant, Justin J. Waterhouse, knowingly sold and conveyed to M.R. things of value belonging to the United States, specifically, night vision monoculars, with an aggregate value in excess of \$1,000.00, intending to deprive the United States the use and benefit of such property.

COUNT 3

Between on or about March 20, 2012, and April 10, 2012, in the Western District of Wisconsin, the defendant, Justin J. Waterhouse, knowingly sold and conveyed to B.G. things of value belonging to the United States, specifically, a night vision monocular, with an aggregate value in excess of \$1,000.00, intending to deprive the United States the use and benefit of such property.

COUNT 4

Between on or about February 15, 2012, to February 22, 2012, in the Western District of Wisconsin, the defendant, Justin J. Waterhouse, knowingly sold and conveyed to D.P. things of value belonging to the United States, specifically, a night vision monocular and gun sight, with an aggregate value in excess of \$1,000.00, intending to deprive the United States the use and benefit of such property.

The defendant has entered pleas of not guilty to these charges.

The defendant is not on trial for any act or any conduct not charged in the indictment.

The defendant is presumed to be innocent of the charges against him. This presumption continues during every stage of the trial and your deliberations on the verdict. It is not overcome unless from all the evidence in the case you are convinced beyond a reasonable doubt that the defendant is guilty as charged.

The government has the burden of proving the defendant's guilt beyond a reasonable doubt. This burden of proof stays with the government throughout the case. The defendant is never required to prove his innocence or to produce any evidence at all.

The indictment charges that the offenses were committed "on or about" certain dates. The government must prove that the offenses happened reasonably close to those dates but it is not required to prove that the alleged offenses happened on those exact dates.

[Note well: the next set of instructions addressing the elements (particularly of Count 1) have been modified since the January 3, 2014 final pretrial conference, as we discussed at that conference. The parties should be sure to make their record at the January 9, 2014 final hearing with Judge Conley regarding these new instructions.]

PROVING THE CHARGES IN THE ALTERNATIVE AND THE REQUIREMENT OF UNANIMITY

Count 1, as set forth above, charges that the defendant “stole and converted to his own use” certain specified items. Counts 2, 3 and 4, as set forth above, each charges that the defendant “sold and conveyed” certain specified items. Although the charges use the word “and,” the government does not have to prove both types of conduct, it only has to prove one type of conduct for each Count.

This means that in Count 1, it is the government’s burden to prove either that the defendant stole the specified items or that he converted them to his own use. However, before you may find that the government has met its burden of proof, all twelve of you must agree on at least one of the two acts. It is not sufficient for some of you to find that the defendant stole these items and the rest of you to find that he converted them to his own use.

Similarly for the Counts 2, 3 and 4, it is the government’s burden to prove either that the defendant sold the specified item(s) or that he conveyed these items to another person as charged. The government does not have to prove both of these things. However, before you may find that the government has met its burden of proof on a particular Count, all twelve of you must agree on at least one of the two acts. It is not sufficient for some of you to find that the defendant sold the specified items and the rest of you to find that he conveyed them to another person.

If you find the defendant guilty of any Count, then you only have to write the word “guilty” on the verdict form for that Count. You do not have to specify on the verdict from which of the two (or both) versions of each charge you found to have been proved beyond a reasonable doubt.

ELEMENTS OF THE CHARGE: COUNT 1

First alternative charge: stealing government property

To prove the charge in Count 1 that the defendant stole the specified items, the government must prove these elements:

1. The things of value described in Count 1 belonged to the United States and had an aggregate value in excess of \$1000.00.
2. The defendant stole these things of value; and
3. The defendant did so with the intent to deprive the United States of the use of these things of value.

If you find from your consideration of all the evidence that each of these elements has been proved beyond a reasonable doubt, then you should find the defendant guilty of stealing government property as charged in Count 1.

On the other hand, if you find from your consideration of all the evidence that any of these propositions has not been proved beyond a reasonable doubt, then you must find the defendant not guilty stealing government property as charged in Count 1.

Second alternative charge: converting government property to his own use

To prove the charge in Count 1, that the defendant converted the specified items to his own use, the government must prove these elements:

1. The things of value described in Count 1 belonged to the United States and had an aggregate value in excess of \$1000.00.

2. The defendant fraudulently appropriated these things of value to his own use or the use of others; and

3. The defendant did so knowingly and willfully, with the intent to deprive the United States of the use of these things of value, either temporarily or permanently.

If you find from your consideration of all the evidence that each of these elements has been proved beyond a reasonable doubt, then you should find the defendant guilty of converting government property as charged in Count 1.

On the other hand, if you find from your consideration of all the evidence that any of these propositions has not been proved beyond a reasonable doubt, then you must find the defendant not guilty of converting government property as charged in Count 1.

ELEMENTS OF THE CHARGE: COUNTS 2, 3 and 4

To sustain any of the charges against the defendant in Counts 2, 3 or 4, the government must prove these elements:

1. The thing(s) of value described in the count that you are considering belonged to the United States and had an aggregate value in excess of \$1000.00.

2. The defendant either sold or conveyed this thing or these things to the person identified in the count that you are considering;

3. The defendant did not have the authority to sell or convey this thing or these things to this person; and

4. The defendant did so with the intent to deprive the United States of the use of this thing or these things of value.

If you find from your consideration of all the evidence that each of these elements has been proved beyond a reasonable doubt as to the count that you are considering, then you should find the defendant guilty of that count.

On the other hand, if you find from your consideration of all the evidence that any of these elements has not been proved beyond a reasonable doubt as to the count that you are considering, then you must find the defendant not guilty of that count.

DEFINITIONS

“Value” means face value, market value (wholesale or retail) or a price actually paid for the item in question, whichever is greater.

INSTRUCTIONS ON RESPONSIBILITY

By themselves, the defendant’s presence at the scene of a crime and knowledge that a crime is being committed are not sufficient to establish the defendant’s guilt.

If the defendant performed acts that advanced a criminal activity but had no knowledge that a crime was being committed or was about to be committed, those acts alone are not sufficient to establish the defendant’s guilt.

An offense may be committed by more than one person. The defendant's guilt may be established without proof that the defendant personally performed every act constituting the crime charged.

If the defendant knowingly caused the acts of another, the defendant is responsible for those acts as though he personally committed them.

The defendant need not personally perform every act constituting the crime charged. Every person who willfully participates in the commission of a crime may be found guilty.

Whatever a person is legally capable of doing he can do through another person by causing that person to perform the act. If the defendant willfully ordered, directed or authorized the acts of another, then he is responsible for such acts as though he personally committed them.

Any person who knowingly aids, abets, counsels, commands, induces or procures the commission of a crime is guilty of that crime. However, that person must knowingly associate himself with the criminal venture, participate in it and try to make it succeed.

DELIBERATIONS

Upon retiring to the jury room, select one of your number as your presiding juror. This person will preside over your deliberations and will be your representative here in court.

A verdict form has been prepared for you. [Court reads verdict form.]

Take this form to the jury room, and when you have reached unanimous agreement on the verdict, your foreperson will fill in, date and sign the form.

Although you have seen that the trial is being recorded by a court reporter, you should not expect to be able to use trial transcripts in your deliberations. You will have to rely on your own memories.

Each count of the indictment charges the defendant with having committed a separate offense. You must consider each count and the evidence relating to it separate and apart from the other counts. You should return a separate verdict as to each count. Your verdict of guilty or not guilty of an offense charged in one count should not control your decision as to the defendant under any other count.

The verdict must represent the considered judgment of each juror. Whether your verdict is guilty or not guilty, it must be unanimous. You should make every reasonable effort to reach a verdict. In doing so, you should consult with one another, express your own views and listen to the opinions of your fellow jurors. Discuss your differences with an open mind. Do not hesitate to re-examine your own views and change your opinion if you come to believe it is wrong. But do not surrender your honest beliefs about the weight or effect of evidence solely because of the opinions of your fellow jurors or for the purpose of returning a unanimous verdict.

The twelve of you should give fair and equal consideration to all the evidence and deliberate with the goal of reaching an agreement consistent with the individual judgment of each juror. You are impartial judges of the facts. Your only interest is to determine whether the government has proved its case beyond a reasonable doubt.

If it becomes necessary during your deliberations to communicate with the court, you may send a note by a bailiff, signed by your foreperson or by one or more members of the jury. No member of the jury should ever attempt to communicate with the court by any means other than a signed writing, and the court will never communicate with any member of the jury on any subject touching the merits of the case otherwise than in writing, or orally here in open court. You will note from the oath about to be taken by the bailiffs that they too, as well as all other persons, are forbidden to communicate in any way or manner with any member of the jury on any subject touching the merits of the case. You must not reveal to any person, including the court, your numerical split on any verdict question until you have reached a unanimous verdict on every count.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

VERDICT

v.

12-cr-64-bbc

JUSTIN J. WATERHOUSE,

Defendant.

COUNT 1

We, the Jury in the above-entitled cause, find the defendant, Justin J. Waterhouse,

("Guilty" or "Not Guilty")

of the offense charged in Count 1 of the indictment.

COUNT 2

We, the Jury in the above-entitled cause, find the defendant, Justin J. Waterhouse,

("Guilty" or "Not Guilty")

of the offense charged in Count 2 of the indictment.

COUNT 3

We, the Jury in the above-entitled cause, find the defendant, Justin J. Waterhouse,

("Guilty" or "Not Guilty")

of the offense charged in Count 3 of the indictment.

COUNT 4

We, the Jury in the above-entitled cause, find the defendant, Justin J. Waterhouse,

("Guilty" or "Not Guilty")

of the offense charged in Count 4 of the indictment.

Presiding Juror

Madison, Wisconsin

Date: _____