

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

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UNITED STATES OF AMERICA,

Plaintiff,

v.

JARRETT JAMES,

Defendant.

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FINAL PRETRIAL  
CONFERENCE ORDER

07-cr-163-bbc

On June 9, 2008, this court held the final pretrial conference. Defendant Jarrett James was present with his attorney, Michael Lieberman. The government was represented by Assistant United States Attorney John Vaudreuil.

The parties had no changes to suggest for the voir dire except to lower the estimated length of trial to two days. The only change to the packet of jury instructions is to add instructions and a verdict form for the forfeiture allegation. The edited voir dire questions and jury instruction packet are attached to this order.

As for the motions *in limine* in filing order, James does not contest the government's motion to exclude alibi evidence, dkt. 49. James contests the government's motion to exclude evidence regarding the cocaine seized from the safe in James' mother's house (dkt 51) but the government might withdraw this motion at the final hearing. James does not contest the government's Rule 609 proffer of his prior convictions or the government's proffer regarding the handgun found in the same safe (dkt. 53). Because the government does not intend to call the expert witness challenged by James, there is no dispute regarding the motion *in limine* docketed as 55. The parties had no other substantive materials to bring to the court's attention.

As noted above, the parties now are predicting a two day trial. One alternative juror will suffice. James has access to street clothes for trial. The parties are aware they must use the court's ELMO. At the final hearing, James intends to request permission for his investigator to sit at counsel table with Attorney Lieberman as a defense "case agent." The government is mulling this request and will provide its position at the final hearing. The parties had no other procedural matters to bring to the court's attention.

Entered this 9<sup>th</sup> day of June, 2008.

BY THE COURT:

/s/

STEPHEN L. CROCKER  
Magistrate Judge

Voir Dire: United States v. Jarrett James, 07-cr-163-bbc

Statement of the case: This is a criminal case, in which the defendant, Jarrett James is charged with robbing the same bank twice, namely Bank Mutual on Century Road in Middleton on March 16, 2006 and April 14, 2006, and with brandishing a firearm during both robberies. 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. Scheduling: this case will begin today and should conclude tomorrow. Are any of you actually unable to sit as jurors because of this schedule?

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

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

Presumption of Innocence. The defendant is presumed to be innocent of the charges. 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.

Burden of Proof. 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 defendants 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.

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

7. The defendant is African American. Would any of you find it difficult to serve as an impartial juror in a case in which a young African American man is charged with crimes involving armed bank robbery?

8. Have any of you, your relatives or any close friends ever worked for any bank, savings and loan, credit union or similar business? [Follow up] Would this affect your ability to be impartial in this case?

9. Have any of you, your relatives or any close friends ever held any accounts at or had other business dealings with any branch of Bank Mutual, including but not limited to the branch in Middleton? [Follow up] Would this affect your ability to be impartial in this case?

10. Have any of you, your relatives or any close friends ever been the victim of any sort of robbery, burglary or other violent crime at home or at work, or been employed by a business that has been robbed or burglarized? [Follow up] Would this affect your ability to be impartial in this case?

11. Have any of you, your relatives, or close friends ever been the victim of any other crime? Would this affect your ability to be impartial in this case?

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

13. How many of you own firearms or live with someone who possesses firearms? Would this affect your ability to be impartial in this case?

14. Other than what you have already told us, do any of you belong to any groups or organizations that concern themselves with firearms or the possession of firearms, either for or against? Would this affect your ability to be impartial in this case?

15. Do any of you have any strong opinions or feelings about firearms or the possession of firearms? Would this affect your ability to be impartial in this case?

16. Have any of you, your family or close friends ever been injured by a firearm? Would this affect your ability to be impartial in this case?

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

18. 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?

19. 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?

20. Have any of you ever belonged to any organization or group that excluded people because of their race, gender, or religion?

21. 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?

22. 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?

23. You may hear testimony in this case from witnesses who have agreed to testify for the government in exchange for benefits such as a reduction in their criminal sentences. Do any of you have strong feelings or opinions about the government's use of plea bargaining to obtain testimony? Would these feelings or opinions affect your ability to be impartial in this case?

24. Would any of you judge the testimony of a witness who was African American differently from other witnesses solely because of the witness's race?

25. 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?

26. 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?

27. 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?

28. 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.

29. 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?

30. 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?

31. 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?

32. 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.



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

---

UNITED STATES OF AMERICA,

JURY INSTRUCTIONS

v.

07-cr-163-bbc

JARRETT JAMES,

---

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.

You have two duties as a jury. Your first duty is to decide the facts from the evidence in the case. This is your job, and yours alone.

Your second duty is to apply the law that I give you to the facts. You must follow my instructions on the law, even if you disagree with them. Each of the instructions is important. You must follow all of them.

Perform these duties fairly and impartially. Do not allow sympathy, prejudice, fear or public opinion to influence you. Do not allow any person's race, color, religion, national ancestry or sex to influence you.

Nothing I say now and nothing I said or did during the trial is meant to indicate any opinion on my part about what the facts are or about what your verdict should be.

The evidence consists of 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.

I have taken 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.

You are to decide whether the testimony of each of the witnesses is truthful and accurate, in part, in whole, or not at all, as well as what weight, if any, you give to the testimony of each witness. In evaluating the testimony of any witness, you may consider among other things: the witness's age; the witness's intelligence; the ability and opportunity the witness had to see, hear, or know the things the witness testified about; the witness's memory; any interest, bias, or prejudice the witness may have; the manner of the witness while testifying; and the reasonableness of the witness's testimony in light of all the evidence in the case.

You should use common sense in weighing the evidence. Consider the evidence in light of your own observations in life. 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.

Some of you have heard the phrases “circumstantial evidence” and “direct evidence.” Direct evidence is the testimony of someone who claims to have personal knowledge of the commission of the crime which has been charged, such as an eyewitness. Circumstantial evidence is the proof of a series of facts that tend to show whether the defendant is guilty or not guilty. The law makes no distinction between the weight to be given either direct or circumstantial evidence. You should decide how much weight to give to any evidence. You should consider all the evidence in the case, including the circumstantial evidence, in reaching your verdict.

Certain things are not evidence. I will list them for you:

First, testimony and exhibits that I struck from the record or that I told you to disregard are not evidence and must not be considered.

Second, anything that you may have seen or heard outside the courtroom is not evidence and must be entirely disregarded. This includes any press, radio, or television reports you may have seen or heard. Such reports are not evidence and must not influence your verdict.

Third, questions and objections by the lawyers are not evidence. Lawyers have a duty to object when they believe a question is improper. You should not be influenced by any objection or by my ruling on it.

Fourth, the lawyers' statements to you are not evidence. The purpose of these statements is to discuss the issues and the evidence. If the evidence as you remember it differs from what the lawyers said, your collective memory is what counts.

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

You may find the testimony of one witness or a few witnesses more persuasive than the testimony of a larger number. You need not accept the testimony of the larger number of witnesses.

You have received evidence of a statement said to be made by the defendant to \_\_\_\_\_ on \_\_\_\_\_. You must decide whether the defendant did make the statement attributed to him. 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.

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 question \_\_\_\_\_. You should consider this evidence only for these limited purposes.

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 about the character trait of \_\_\_\_\_ for untruthfulness. You should consider this evidence in deciding the weight that you will give to their testimony.

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.

You have heard evidence about a number of the witnesses that may affect your evaluation of their testimony:

You have heard testimony from \_\_\_\_\_, who admitted lying under oath.

You have heard testimony that \_\_\_\_\_ have received benefits from the government in connection with this case. Specifically, \_\_\_\_\_.

You have heard testimony from \_\_\_\_\_, who stated that they were involved in the commission of the alleged crimes charged against the defendant.

The witnesses \_\_\_\_\_ have pleaded guilty to crimes arising out of the same allegations for which the defendant is now on trial.

The witnesses \_\_\_\_\_ have received immunity; that is, a promise from the government that any testimony or other information she provided would not be used against her in a criminal case.

You may give the testimony of all 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 witnesses \_\_\_\_\_ cannot be considered as evidence against the defendants on trial now.

### THE INDICTMENT

The defendant is charged in the indictment as follows:

*[Court reads the indictment]*

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

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. This presumption continues during every stage of the trial and your deliberations on the verdict. It is not overcome as to the defendant 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 ELEMENTS OF COUNTS 1 AND 3: ARMED BANK ROBBERY

To sustain the charge in either Count 1 or Count 3, the government must prove these elements:

1) The defendant took from the person or presence of another money belonging to, or was in the care, custody, control, management or possession of Bank Mutual in Middleton, Wisconsin on or about the date charged in count that you are considering;

2) At the time of charged in the count that you are considering, this bank had its deposits insured by the Federal Deposit Insurance Corporation;

3) The defendant took such money by means of force and violence, or by means of intimidation; and

4) The defendant assaulted or put in jeopardy the life of another person by the use of a dangerous weapon while committing the robbery.

If you find from your consideration of all the evidence that each of these propositions 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 propositions 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.

In order to meet its burden of proof as to the first element of Count 1 or Count 3, the government must prove that the money allegedly taken belonged to, or was in the care, or the custody, or under the control, or under the management of the bank. The government does not need to prove all of these ways that the bank could have possessed and controlled the money, but it must prove at least one of them. Before you may find that the government has met this burden in any given count, all twelve of you must agree on whether the money specified in that count belonged to or was in the care, or the custody, or the control, or the possession, or under the management of the bank.

As used in the third element of Counts 1 and 3 , “intimidation” means to say or do something in such a way as would place a reasonable person in fear. Actual fear is not required since intimidation may be inferred from conduct, words or circumstances reasonably calculated to produce fear. Such conduct, words and circumstances include both the actions and statements of the defendant and the victims.

As to the third element of Counts 1 and 3, the government must prove that the defendant took money either by force and violence, or by intimidation. It does not have to prove both. However, before you may find that the government has met its burden as to the third element, you must unanimously agree on at least one of these two methods. It is not sufficient for some of you to find that the defendant took money by means of force and violence, while the rest of you find that he took money by means of intimidation.

As used in the fourth element of Counts 1 and 3, the term “dangerous weapon” means any instrument or devise capable of inflicting serious bodily injury of causing the death of another person. Both the physical capabilities of the object used and the manner in which the object is used may be considered by you in determining whether the object is a “dangerous weapon.”

As used in the fourth element of Counts 1 and 3, the phrase “put in jeopardy the life of any person” means knowingly to do an act which exposes another person to risk of death. In considering this element, you must focus on the actual risk of death created by the use of the dangerous weapon or device. This risk might include direct risk to the bank employees and indirect risk through a violent response by a customer or the police.

#### THE ELEMENTS OF COUNTS 2 AND 4: BRANDISHING A FIREARM DURING A BANK ROBBERY

To sustain the charge in either Count 2 or Count 4, the government must prove these element:

- 1) For Count 2, that the defendant committed the crime of bank robbery as charged in Count 1, and for Count 4 that the defendant committed the crime of bank robbery as charged in Count 3; and,
- 2) The defendant knowingly brandished a firearm during and in relation to the bank robbery you are considering.

If you find from your consideration of all the evidence that both of these propositions 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.

If, on the other hand, you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt as to the count that you are considering, then you should find the defendant not guilty of that count.

As used in Count 3, “firearm” means any weapon which will, or is designed to, or may readily be converted to expel a projectile by the action of an explosive. The government is not required to prove that a firearm was operable in order for it to fit within this definition.

As used in Count 3, “brandished” means that the defendant displayed part or all of the firearm, or otherwise made the presence of the firearm known to another person, in order to intimidate that person, regardless of whether the firearm was directly visible to that person.

As used throughout these instructions, “knowing” and “knowingly” mean that the defendant realized what he was doing and was aware of the nature of his conduct and did not act through ignorance, mistake or accident. Knowledge may be proved by the defendant's conduct and by all the facts and circumstances surrounding the case.



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 it.

Each count of the indictment charges the defendant with having committed a separate offense. You must give separate consideration to each count. You must consider each count and the evidence relating to it separate and apart from the other count. 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

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UNITED STATES OF AMERICA,

Plaintiff,

v.

VERDICT

08-cr-163-bbc

JARRETT JAMES,

Defendant.

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COUNT 1

We, the Jury in the above-entitled cause, find the defendant, Jarrett James,

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("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, Jarrett James,

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("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, Jarrett James,

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("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, Jarrett James,

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("Guilty" or "Not Guilty")

of the offense charged in Count 4 of the indictment.

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Presiding Juror

Madison, Wisconsin

Date: \_\_\_\_\_

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

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UNITED STATES OF AMERICA,

JURY INSTRUCTIONS: FORFEITURE

v.

07-cr-163-bbc

JARRETT JAMES,

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Because you have returned a guilty verdict as to Count 3, you have one more task to perform. The government is seeking forfeiture from the defendant as charged by the grand jury:

FORFEITURE ALLEGATION

By virtue of the commission of the felony offense charged in Count 3, upon conviction, the defendant, Jarrett M. James, shall forfeit to the United States all right, title and interest in a 2000 Lexus ES300 - VIN: JT8BF28GXY5085768, which is property traceable to the offense charged in Count 3.

The government must prove its case for forfeiture by a preponderance of the evidence. A “preponderance of the evidence” means an amount of evidence which is enough to persuade you the government’s forfeiture allegations are more likely true than not true.

If you find by a preponderance of the evidence that the property identified in this forfeiture allegation is traceable to the offense charged in Count 3, then this property is forfeit. “Traceable to the offense charged” means that the defendant used some of the proceeds from the April 14, 2006 robbery of Bank Mutual in Middleton to pay some or all of the cost of this 2000 Lexus ES300.

You are to determine only if a defendant’s rights, title and interests, if any, in this motor vehicle should be forfeited. You are not called upon to determine whether or not any other person has any right, title or interest in this motor vehicle, or whether or not their interest

should be forfeited. That is a matter to be determined by the court in further proceedings, if necessary. You need only determine whether or not the government has proved by a preponderance of the evidence that the defendant's interest in the specified motor vehicle, is forfeitable.

All of the instructions previously given to you concerning your consideration of the evidence, the credibility or believability of the witnesses, your duty to deliberate together and the necessity of an unanimous verdict, will all continue to apply during your deliberations concerning the forfeiture claims. Keep in mind, however, that the government's burden of proof is different in this portion of the case.

A special verdict form has been prepared for your use. You are asked to determine unanimously whether the property is to be forfeited to the United States. You may answer by simply writing the answer "Yes" or "No" in response to the question on the special verdict form. Then the foreperson must sign and date the special verdict form.

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

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UNITED STATES OF AMERICA,

Plaintiff,

SPECIAL VERDICT

v.

07-cr-163-bbc

JARRETT JAMES,

Defendant.

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Is the property listed in the Forfeiture Allegation, namely the 2000 Lexus ES300 -  
VIN: JT8BF28GXY5085768, subject to forfeiture to the United States?

\_\_\_\_\_  
("Yes" or "No")

\_\_\_\_\_  
Presiding Juror

Madison, Wisconsin

Date: \_\_\_\_\_