

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

Criminal Case No. 08-cr-00436-JLK

UNITED STATES OF AMERICA,

Plaintiff,

v.

1. SIMON AMARO,

Defendant.

---

JURY INSTRUCTIONS AND VERDICT FORM

---

## INSTRUCTION NO. 1

### **Preliminary Instruction - How Trial Will Proceed**

Members of the Jury:

In a moment I will give you some detailed instructions on this case and how you will go about reaching your decision. But first I will explain generally how this trial will proceed.

This criminal case has been brought by the United States government. I will sometimes refer to the government as the prosecution. The government is represented by Assistant United States attorneys Kurt J. Bohn and Ryan Bergsieker. The defendant, Simon Amaro, is represented by his lawyer, Martha Eskesen.

An Indictment is the legal document in which the government lists the criminal acts, or "Counts," with which it is charging the defendant. It can be filled with legal terms and citations to statutes and regulations, and it is not necessary to read it to you verbatim.

The Indictment in this case charges SIMON AMARO with one count as follows: On or about August 8, 2008, in the State and District of Colorado, the defendant, SIMON AMARO, having been previously convicted of crimes punishable by imprisonment by a term exceeding one year, did unlawfully and knowingly possess a firearm, to wit: a Taurus-Brazil, Model 65, .357 magnum revolver, in and affecting interstate commerce.

The charge made by the government against the defendant, Mr. Amaro, is not evidence of guilt or anything else. Likewise, Mr. Amaro pleaded not guilty to this charge and is therefore presumed innocent, but his plea also is not evidence. Mr. Amaro may not be found guilty of any charge unless all twelve of you unanimously find that the government has proved every material element of the charge beyond a reasonable doubt.

The first step in the trial will be your selection as jurors. The second step is my reading of the jury instructions to you. Next will be the opening statements. The government in its opening statement will tell you what evidence it intends to put before you. Just as the Indictment is not evidence, neither is the opening statement. Its purpose is to help you understand what the evidence will be. It is a road map to show you what is ahead.

After the government's opening statement, Mr. Amaro's attorney will make an opening statement. Likewise, her opening statement is not evidence, but is intended to inform you of Mr. Amaro's defense against the charge.

Evidence will be presented from which you will have to determine the facts. You are the judges of the facts. The evidence will consist of witness testimony, documents and other things received into the record as exhibits, and any facts about which the government and the defendant agree or I tell you to accept as true. How much weight to give to the evidence is always up to you.

The government will offer its evidence first. After the government's evidence, Mr. Amaro may present evidence, but he is not required to do so. I remind you that Mr. Amaro is presumed innocent and it is the government that must prove his guilt beyond a reasonable doubt. If Mr. Amaro submits evidence, the government may introduce rebuttal evidence.

At times during the trial, a lawyer may make an objection to a question asked by another lawyer, or to an answer by a witness. This means that the lawyer is requesting that I make a decision on a particular rule of law. Do not draw any conclusion from such objections or from my rulings on the objections. If I sustain an objection to a question, the witness may not answer it. Do not attempt to guess what answer might have been given if I had allowed the answer. If I overrule the objection, treat the answer as any other. If I tell you not to consider a particular statement, you may not refer to that statement in your later deliberations. Similarly, if I tell you to consider a particular piece of evidence for a specific purpose, you may consider it only for that purpose. ***Each of you is responsible for making sure that no juror bases a decision on matters not in evidence.***

During the course of the trial I may have to interrupt the proceedings to confer with the attorneys about the rules of law that should apply. Sometimes we will talk briefly, at the bench. But some of these conferences may take more time, so I will excuse

you from the courtroom. I will try to avoid such interruptions whenever possible, but please be patient even if the trial seems to be moving slowly because conferences often actually save time in the end.

You are to consider all the evidence received in this trial and *only* the evidence received at trial. It will be up to you to decide what evidence to believe and how much of any witness's testimony to accept or reject. After you have heard all the evidence on both sides, the government and the defense will each be given time for their final arguments. These arguments are not evidence. After the closing arguments, I will again instruct you on the rules of law you are to use in reaching your verdict, and then you will retire to decide your verdict. You will have copies of the instructions with you throughout the trial and in the jury room.

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

Ordinarily, the attorneys will develop all the relevant evidence that will be necessary for you to reach your verdict. However, in rare situations, one of you may believe a question is critical to reaching a decision on a necessary element of the case. In that situation, you may write out a question and provide it to the courtroom deputy at the

next recess. I will then consider that question with the lawyers. If it is determined to be a proper and necessary question, I will ask it. If I do not ask it, I will tell you why and explain why such an answer cannot be given.

If you would like to take notes during the trial, you may. On the other hand, you are not required to take notes. If you decide to take notes, be careful not to get so involved in note taking that you become distracted, and remember that your notes will not necessarily reflect exactly what was said, so your notes should be used only as memory aids. Therefore, you should not give your notes precedence over your independent recollection of the evidence. You should also not be unduly influenced by the notes of other jurors. If you do take notes leave them in the jury room at night and do not discuss the contents of your notes *with anyone* until you begin deliberations.

During the course of the trial, you should not talk with any witness, or with Mr. Amaro, or with any of the lawyers at all. Also, you should not discuss the merits of this case among yourselves until you have gone to the jury room to make your decision at the end of the trial. It is important that you wait until all the evidence is received and you have again heard my instructions on the controlling rules of law before you deliberate among yourselves. In other words, keep an open mind and form no opinions until you can consider all the evidence and the instructions of law together.

During the course of the trial you will receive all the evidence you legally may

consider to decide the case. Gathering any information on your own that you think might be helpful is against the law and would be a violation of your oath. Do not engage in any online or outside reading or research on this case, even including dictionaries or a bible, do not consult maps or attempt to visit any places mentioned in the case, and do not in any other way try to learn about the case outside the courtroom. Part of my job is to protect you from outside influences. ***Your job is to confine your decisions to what takes place in this courtroom.***

I wish I did not have to dwell on this topic, but recent events in this courtroom and around the United States, and recent technologies, require me to point out that some common practices and habits many of you enjoy are strictly forbidden in your role as jurors. You may not, under any circumstances, have your cell phones, blackberries, iphones or the like on when court is in session. ***Whether you are here or away from the court during recess you may not “google, twitter, tweet, text message, blog, post” or anything else with those gadgets about or concerning anything to do with this case.*** To do so could cause a mistrial, meaning all of our efforts would have been wasted and we would have to start all over again with a new trial before a new jury. If you were to cause a mistrial by violating these orders, you could be subject to paying all the costs of these proceedings and perhaps punished for contempt of court.

This is not a trivial matter. Less than a month ago, after the evidence in a criminal

case was completed and over the weekend recess, a juror, despite this order, “googled” maps on the internet that she thought were relevant to the case. I had to declare a mistrial and that juror is now facing contempt of court charges that can result in her being held in contempt of court, jailed and/or ordered to reimburse both the prosecution and the defense for the costs and fees incurred in that trial. Her actions compromised a years-long investigation and prosecution, violated the defendant’s right to know and confront all of the evidence used against him, and caused all of the time expended by the court, counsel and her fellow jurors to hear the case to have been wasted.

What you may do is advise anyone who needs to know, such as family members, employers, employees, schools, teachers, or daycare providers that you are a juror in a case and the judge has ordered you not to discuss it until you have reached a verdict and been discharged from the case. At that point you will be free to discuss this case or investigate anything about it to your heart’s delight.

If during the course of the trial you believe there is anything you need to know, please write down your request and give it to the courtroom deputy. The deputy will give it to me and we will provide you with the information or explain why it cannot be provided.

***Fairness to all concerned requires that all of us connected with this case deal with the same information and with nothing other than the same information produced***

*in this courtroom.* The reason for this is that your decision in this case must be made solely on the evidence presented at the trial. Finally, I note that the court reporter is making stenographic notes of everything that is said. This is required in case there are any appeals. You will *not* have a typewritten copy of the testimony available for your use during deliberations. A transcript must be reviewed and corrected before it can be certified. Both the prosecution and the defense have the right to examine and object to any perceived errors in the transcript. This is a time-consuming process that cannot be completed in time for you to use it. On the other hand, any exhibits admitted at trial will be available to you during your deliberations.

## INSTRUCTION NO. 2

### **Instructions are Binding**

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

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

It is also my duty to explain to you the rules of law that you must follow and apply in arriving at your verdict. In explaining the rules of law that you must follow, I will first give you some general instructions which apply in every criminal case--for example, instructions about burden of proof and insights that may help you to judge the believability of witnesses. Then I will give you some specific rules of law that apply to this particular case and, finally, I will explain the procedures you should follow in your deliberations, and the possible verdict you may return. These instructions will be given to you for use in the trial and in the jury room, so you may, but need not, take notes.

### INSTRUCTION NO. 3

#### **Duty to Follow All Instructions**

You, as jurors, are the judges of the facts. But in determining what actually happened – that is, in reaching your decision as to the facts – it is your sworn duty to follow all of the rules of law as I explain them to you.

You may not disregard or give special attention to any one instruction, or question the wisdom or correctness of any rule I may state to you. You must not substitute or follow your own notion or opinion as to what the law is or ought to be. It is your duty to apply the law as I explain it to you, regardless of the consequences.

*In your deliberations you must see to it that no one else on the jury ignores the instructions or attempts to decide the case on anything other than the law and the evidence.* It is always to be born in mind that our collective commitment is to equal justice under the law. Matters of race, creed, color, nationality and gender have no place in this process. To the best of your ability you are to judge others as you would want others to judge you under the law I give you. *The very heart of justice is that all apply the same law to the same evidence and leave our personal desires out of it.*

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

It is also your duty to base your verdict solely upon the evidence, without prejudice or sympathy. That was the promise you made and the oath you took.

## INSTRUCTION NO. 4

### **Presumption of Innocence - Burden of Proof - Reasonable Doubt**

The charge against Mr. Amaro is not evidence of guilt. Indeed, Mr. Amaro is presumed by the law to be innocent. The law does not require Mr. Amaro to prove his innocence or produce any evidence at all. The government has the burden of proving Mr. Amaro guilty beyond a reasonable doubt, and if it fails to do so, you must find Mr. Amaro not guilty.

Proof beyond a reasonable doubt is proof that leaves you firmly convinced of Mr. Amaro's guilt. There are few things in this world that we know with absolute certainty, and in criminal cases the law does not require proof that overcomes every possible doubt. It is only required that the government's proof exclude any "reasonable doubt" concerning Mr. Amaro's guilt. A reasonable doubt is a doubt based on reason and common sense after careful and impartial consideration of all evidence in the case. It is a doubt based on the evidence and not on a hunch, a guess or a whim.

If, based on your consideration of the evidence, you are firmly convinced that Mr. Amaro is guilty of the crime charged, you must find him guilty of that crime. If on the other hand, you think there is a real possibility that the government failed to prove his guilt, you must give him the benefit of the doubt and find him not guilty.

## INSTRUCTION NO. 5

### **What is Evidence, What is not Evidence**

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

The evidence in this case includes only what the witnesses say [said] while they are [were] testifying under oath, the exhibits that I allow [allowed] into evidence, the stipulations that the lawyers agree [agreed] to and I accept [accepted], and the facts that I judicially notice [noticed]. Judicial notice is my recognition of commonly accepted facts such as time, date and place, as well as matter such as existing government regulations.

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

During the trial, I will not [did not] let you hear the answers to some of the questions that the lawyers ask [asked]. I may also rule [also ruled] that you cannot see some of the exhibits that the lawyers want you to see. And sometimes I may order [ordered] you to disregard things that you see or hear [saw or heard], or I may strike [struck] things from the record. You must completely ignore all of these things. Do not even think about them. Do not speculate about what a witness might have said or what an

exhibit might have shown. These things are not evidence, and you are bound by your oath not to let them influence your decision in any way.

INSTRUCTION NO. 6

## **Evidence - Direct and Circumstantial - Inferences**

Generally speaking, two types of evidence are available from which you may properly determine the facts of a case. One is direct evidence, such as the testimony of an eyewitness. The other is indirect or circumstantial evidence, that is, the proof of a chain of facts which point to the existence or non-existence of certain other facts.

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

While you must consider only the evidence in this case, you are permitted to draw reasonable inferences from the testimony and exhibits, inferences you think are justified in the light of common experience. An inference is a conclusion that reason and common sense may lead you to draw from facts which have been proved.

By permitting such reasonable inferences, you may make deductions and reach conclusions that reason and common sense lead you to draw from the facts which have been established by the testimony and evidence in this case.

INSTRUCTION NO.7

**Evidence Admitted for a Limited Purpose Only**

This evidence is admitted only for a particular purpose and not generally for all purposes. The particular purpose is \_\_\_\_\_.

For the limited purpose for which this evidence is received, you may give it such weight as you feel it deserves. You may not, however, use this evidence for any other purpose not specifically mentioned.

**Defendant does not believe this instruction to be relevant at this time. JLK:**  
We will not include this instruction in the book of instructions and will provide it during trial should the occasion call for it.

## INSTRUCTION NO. 8

### **Stipulations**

The Government and the Defendant, through their respective counsel, have stipulated and agreed that the facts below are proven true and cannot be disproved, disputed or contradicted by either party during trial:

1. On August 8, 2008, the defendant Simon Amaro, was a felon and prohibited person. Mr. Amaro was previously convicted of a felony offense, that is an offense punishable by more than one year imprisonment.

2. The Taurus-Brazil, Model 65, .357 magnum revolver, serial number NF960613, Government Exhibit 1, was not manufactured in the state of Colorado. Therefore, it traveled through various states into Colorado (“interstate commerce”), before August 8, 2008.

3. On August 8, 2008, the Taurus-Brazil, Model 65, .357 magnum revolver, Government Exhibit 1, was operational and functioned as designed, in that it could expel a projectile by the action of an explosive force.

## INSTRUCTION NO. 9

### **Credibility of Witnesses**

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

You are the sole judges of the credibility or "believability" of each witness and the weight to be given to the witness's testimony. An important part of your job will be making judgments about the testimony of the witnesses who testify in this case. This includes Mr. Amaro, if he chooses to testify.

You should think about the testimony of each witness you hear [have heard] and decide whether you believe all or any part of what each witness has [had] to say, and how important that testimony is [was]. In making that decision, I suggest that you ask yourself a few questions: Did the witness impress you as honest? Did the witness have any particular reason not to tell the truth? Did the witness have a personal interest in the outcome in this case? Did the witness have any relationship with either the government or the defense? Did the witness seem to have a good memory? Did the witness clearly see or hear the things about which he/she testified? Did the witness have the opportunity and ability to understand the questions clearly and answer them directly? Did the

witness's testimony differ from the testimony of other witnesses? When weighing the conflicting testimony, you should consider whether the discrepancy has to do with a material fact or with an unimportant detail. And you should keep in mind that innocent misrecollection —like failure of recollection—is not uncommon.

If he testifies, the testimony of Mr. Amaro should be weighed and his credibility evaluated in the same way as that of any other witness.

In reaching a conclusion on a particular point, or ultimately in reaching a verdict in this case, do not make any decisions simply because there were more witnesses on one side than on the other. Look to the quality rather than the quantity of the testimony.

INSTRUCTION NO. 10

**Impeachment by Prior Inconsistencies**

You may hear [have heard] the testimony of witnesses who, before this trial, made statements that are [were] different from their testimony here in court.

These earlier statements will be [were] brought to your attention to help you decide on the credibility of those witnesses. You cannot use the earlier statements as proof of anything else. You can use them only as a way of evaluating the witnesses' testimony here in court.

INSTRUCTION NO. 11

**Non-Testifying Defendant**

If the defendant, SIMON AMARO, does not [did not] testify, you cannot consider his decision not to testify as evidence of guilt. The Constitution of the United States grants to a defendant the right to remain silent and that right is vigorously guarded. That means the right not to testify, and you must not presume or infer guilt from the fact that a defendant does not take the witness stand and testify or call any witnesses. A defendant is not required to explain anything or come forward with any evidence.

**Defendant does not believe it is relevant at this time.** JLK: we will include this instruction only if Defendant does not testify.

## INSTRUCTION NO. 12

### **Voluntariness of Statement by Defendant**

Evidence that Mr. Amaro made a statement after the commission of the crime charged in this case but not made in court should always be considered by you with caution and weighed with care. Any such statement should be disregarded entirely unless you find by a preponderance of all the evidence that the statement was made knowingly and voluntarily.

In determining whether any such statement was knowingly and voluntarily made you should, for example, consider the age, gender, training, education, occupation, and physical and mental condition of the person making the statement, and any evidence concerning his treatment while under interrogation if the statement was made in response to questioning by government officials, and all the other circumstances in evidence surrounding the making of the statement.

If, after considering all this evidence, you conclude by a preponderance of the evidence that the defendant's statement was made knowingly and voluntarily, you may give such weight to the statement as you feel it deserves under all the circumstances.

## INSTRUCTION NO. 13

### **Exculpatory Statements**

During the course of the trial you may hear [heard] witnesses testify about statements made by the defendant, Mr. Amaro, after he was confronted with some suggestion that he might have been guilty of the commission of a crime. The conduct of a defendant, including statements made and acts done upon being informed that a crime has been committed, or upon being confronted with a criminal charge, may be considered by you in the light of other evidence in the case in determining the guilt or innocence of the accused.

When a defendant voluntarily offers an explanation or makes some statement tending to establish his innocence, and such explanation or statement is later shown to be false in whole or in part, you may consider whether this circumstantial evidence points to a consciousness of guilt. It is reasonable to infer that an innocent person does not ordinarily find it necessary to invent or fabricate a voluntary explanation or statement tending to establish his innocence. Whether or not evidence as to a defendant's voluntary explanation or statement points to a consciousness of guilt and the significance, if any, to be attached to any such evidence, are matters for your determination.

INSTRUCTION NO. 14

**Jury's Recollection Controls**

If any reference by me or by counsel to matters of testimony or exhibits does not coincide with your own recollection of that evidence, it is your recollection which controls during your deliberations and not my statements or statements of counsel.

You are the sole judges of the evidence received in this case.

INSTRUCTION NO.15

**Introduction to the Charged Offense**

Mr. Amaro has been charged in the indictment with one count of an alleged criminal violation.

In order for the government to prove that Mr. Amaro committed the alleged crime, it must prove the material elements of the crime beyond a reasonable doubt. I will now tell you what those elements are.

INSTRUCTION NO. 16

**Possession of a Firearm by a Convicted Felon**

Mr. Amaro is charged with a violation of 18 U.S.C. section 922(g)(1).

This law makes it a crime for any person who has been previously convicted in any court of a felony to knowingly possess any firearm in or affecting interstate commerce.

The indictment charges Mr. Amaro with one count of this crime. The charge against Mr. Amaro is as follows:

On or about August 8, 2008, in the State and District of Colorado, the defendant, SIMON AMARO, having been previously convicted of crimes punishable by imprisonment by a term exceeding one year, did unlawfully and knowingly possess a firearm, to wit: a Taurus-Brazil, Model 65, .357 magnum revolver, serial number NF960613 in and affecting interstate commerce.

To find Mr. Amaro guilty of this crime you must be convinced that the government has proved each of the following elements beyond a reasonable doubt:

*First:* the defendant knowingly possessed a firearm;

*Second:* the defendant was convicted of a felony, that is, a crime punishable by imprisonment for a term exceeding one year, before he possessed the firearm; and

*Third:* before the defendant possessed the firearm, the firearm had moved at some time from one state to another.

The parties have stipulated in this case that the Defendant SIMON AMARO, on August 8, 2008, was a felon and had been previously convicted of a felony offense, that is an offense punishable by more than one year imprisonment. (See Instruction No. 8)

The parties have also stipulated that the Taurus-Brazil, Model 65, .357 magnum revolver, serial number NF960613, Government Exhibit 1, was not manufactured in the state of Colorado. Therefore, it traveled from another state into Colorado (“interstate commerce”), prior to August 8, 2008. (See Instruction No. 8)

**Defendant objects to the language in the instruction as redundant, to the extent that it repeats the indictment the jury will receive. –DENIED, the Indictment won’t be read.**

INSTRUCTION NO. 17

**“On or About”**

Mr. Amaro is charged with having committed a crime “on or about” a certain date. This means that the government must prove beyond a reasonable doubt that Mr. Amaro committed the crime reasonably near the date charged.

## INSTRUCTION NO.18

### **"Knowingly – Defined"**

An act is done knowingly if a person is aware of the act and does not act through ignorance, mistake or accident. You may consider evidence of Mr. Amaro's words, acts, or omissions, along with all the other evidence, in deciding whether he acted knowingly.

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

Although knowledge on the part of Mr. Amaro cannot be established merely by demonstrating that he was negligent, careless or foolish; knowledge can be inferred if Mr. Amaro deliberately blinded himself to the existence of a fact.

You may also infer, but you are certainly not required to infer, that a person intends the natural and probable consequences of acts knowingly done or knowingly omitted. It is entirely up to you, however, to decide what facts to find from the evidence received during this trial.

## INSTRUCTION NO.19

### **“Firearm” – Defined**

The term “firearm” as used in these instructions means any weapon that will or is designed to or may readily be converted to expel a projectile by the action of an explosive. The term “firearm” also includes the frame or receiver of any such weapon, or any firearm muffler or firearm silencer, or destructive device.

The parties have stipulated in this case that on August 8, 2008, the Taurus-Brazil, Model 65, .357 magnum revolver, Government Exhibit 1, was operational and functioned as designed, in that it could expel a projectile by the action of an explosive force. (See Instruction No. 8)

## INSTRUCTION NO. 20

### **Actual or Constructive Possession**

The law recognizes two kinds of possession: actual possession and constructive possession. A person who knowingly has direct physical control over an object or thing, at a given time, is then in actual possession of it.

A person who, although not in actual possession, knowingly has the power at a given time to exercise dominion or control over an object, either directly or through another person or persons, is then in constructive possession of it.

INSTRUCTION NO. 21

**Consider Only Crime Charged**

You are here to decide whether the government has proved beyond a reasonable doubt that the defendant is guilty of the crime charged. The defendant is not on trial for any act, conduct, or crime not charged in the Indictment.

It is not up to you to decide whether anyone who is not on trial in this case should be prosecuted for the crime charged. The fact that another person *also* may be guilty is no defense to a criminal charge.

The question of the possible guilt of others should not enter your thinking as you decide whether this defendant has been proven guilty of the crime charged.

INSTRUCTION NO. 22 - (ARGUMENT NEEDED)

**Similar Acts**

You have heard evidence of other crimes engaged in by Mr. Amaro. You may consider that evidence only as it bears on Mr. Amaro's [e.g., motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake or accident] and for no other purpose. Of course, the fact that Mr. Amaro may have previously committed an act similar to the one charged in this case does not mean that the defendant necessarily committed the act charged in this case.

**Defendant objects to this instruction based on Fed. R. Evid. 403 and 404.**

INSTRUCTION NO. 23

**Punishment**

If you find Mr. Amaro guilty, it will be my duty to decide what the punishment will be as provided by law. You should not discuss or consider any possible punishment in any way while deciding your verdict.

## INSTRUCTION NO. 24

### **Jury - Deliberations**

After the parties have made their closing arguments and I have instructed you for the final time, a court official will escort you to the jury room so you can begin your deliberations. You will have a copy of the instructions and verdict form that I will have just read, and any exhibits admitted into evidence will also be placed in the jury room for your review.

When you go to the jury room, you must elect your Presiding Juror. He or she will preside over your deliberations and speak for you here in court.

You will then discuss the case with your fellow jurors to reach agreement if you can do so. Your verdict, whether it is guilty or not guilty, must be unanimous.

Each of you must decide the case for yourself, but you should do so only after you have considered all of the evidence, discussed it with your fellow jurors, and listened to the views of your fellow jurors. I offer some suggestions on how you might do this in the next jury instruction, entitled “Jury - The Deliberations Process.”

One thing you should do in your deliberations is to follow these jury instructions and the verdict form. Not only will your deliberations be more productive if you understand the legal principles on which any verdict must be based, but for a verdict to be valid, you must follow the instructions throughout your deliberations. Remember, you

are the judges of the facts, and you are bound by your oath to follow the law stated in these instructions. Your deliberations will be secret. You will never have to explain your verdict to anyone.

If you need to communicate with me during your deliberations, the Presiding Juror should write a message and give it to the Court Security Officer. I will reply in writing or bring you back into the court to respond to your message. Under no circumstances should you reveal to me, the Court Security Officer or anyone else not on the jury where you stand or what your vote might be until you have reached your verdict or I have discharged you.

Please bear in mind that a response takes considerable time and effort. I must first notify the attorneys to return to court. Then I must confer with them, consider their arguments and, decide upon the correct answer. In some instances further research might be required.

A verdict form has been prepared for your convenience. The Presiding Juror will write the unanimous answer of the jury in the space provided on the verdict form. At the conclusion of your deliberations, the Presiding Juror should date and sign the verdict form, and then all the other jurors should sign the verdict form. The Presiding Juror should then advise the Court Security Officer stationed outside the jury room that you have reached your verdict.

## INSTRUCTION NO. 25

### **Jury - The Deliberation Process** (for criminal cases)

Once you have elected your Presiding Juror as directed by the previous instruction, you are free to proceed as you agree is appropriate. Therefore, I am not directing you how to proceed, but I offer the following suggestions that other juries have found helpful so that you can proceed in an orderly fashion, allowing full participation by each juror, and arrive at a verdict that is satisfactory to each of you.

*First*, it is the responsibility of the Presiding Juror to encourage good communication and participation by all jurors and to maintain fairness and order. Your Presiding Juror should be willing and able to facilitate productive discussions even when disagreements and controversy arise.

*Second*, the Presiding Juror should let each of you speak and be heard before expressing his or her own views.

*Third*, the Presiding Juror should never attempt to promote nor permit anyone else to promote his or her personal opinions by coercion or intimidation or bullying of others.

*Fourth*, the Presiding Juror should make certain that the deliberations are not rushed to reach a conclusion.

If the Presiding Juror you select does not meet these standards, he or she should voluntarily step down or be replaced by a majority vote.

After you select a Presiding Juror you should consider electing a secretary who will tally the votes, help keep track of who has or has not spoken on the various issues, make certain that all of you are present whenever deliberations are under way and otherwise assist the Presiding Juror.

Some juries are tempted to start by holding a preliminary vote on the case to “see where we stand.” It is most advisable, however, that no vote be taken before a full discussion is had on the issue to be voted on, otherwise you might lock yourself into a certain view before considering alternative and possibly more reasonable interpretations of the evidence. Experience has also shown that such early votes frequently lead to disruptive, unnecessarily lengthy, inefficient debate and ineffective decision-making.

Instead, I suggest the Presiding Juror begin your deliberations by directing the discussion to establishing informal ground rules for how you will proceed. These rules should assure that you will focus upon, analyze and evaluate the evidence fairly and efficiently and that the viewpoints of each of you is heard and considered before any decisions are made. No one should be ignored. You may agree to discuss the case in chronological order or according to the testimony of each witness, or in the order of these instructions. Whatever order you select, however, it is advisable to be consistent and not jump from one topic to another.

To move the process of deliberation along in the event your reach a controversial

issue, it is wise to pass it temporarily and move on to the less controversial ones and then come back to it. You should then continue through each issue in the order you have agreed upon unless a majority of you agrees to change the order.

It is very helpful, but certainly not required of you, that all votes be taken by secret ballot. This will help you focus on the issues and not be overly influenced by personalities. Each of you should also consider any disagreement you have with another juror or jurors as an opportunity for improving the quality of your decision and therefore should treat each other with respect. Any differences in your views should be discussed calmly and, if a break is needed for that purpose, it should be taken.

Each of you should listen attentively and openly to one another before making any judgment. This is sometimes called “active listening” and it means that you should not listen with only one ear while thinking about a response. Only after you have heard and understood what the other person is saying should you think about a response.

Obviously, this means that, unlike TV talk shows, you should try very hard not to interrupt. If one of you is going on and on, it is the Presiding Juror who should suggest that the point has been made and it is time to hear from someone else.

You each have a right to your individual opinions, but you should be open to persuasion. When you focus your attention and best listening skills, others will feel

respected and, even while they may disagree, they will respect you. It helps if you are open to the possibility that you might be wrong or at least that you might change your mind about some issues after listening to other views.

Misunderstanding can undermine your efforts. Seek clarification if you do not understand or if you think others are not talking about the same thing. From time to time the Presiding Juror should set out the items on which you agree and those on which you have not yet reached agreement.

In spite of all your efforts, it is indeed possible that serious disagreements may arise. In that event, recognize and accept that “getting stuck” is often part of the decision-making process. It is easy to fall into the trap of believing that there is something wrong with someone who is not ready to move toward what may be an emerging decision. Such a belief is not helpful. It can lead to focusing on personalities rather than the issues. It is best to be patient with one another. At such times slower is usually faster. There is a tendency to set deadlines and seek to force decisions. Providing a break or more time and space, however, often helps to shorten the overall process.

You may wish from time to time to express your mutual respect and repeat your resolve to work through any differences. With such a commitment and mutual respect, you will most likely render a verdict that leaves each of you satisfied that you have indeed rendered justice.

**Defendant objects to this instruction because he does not believe it is the Court's responsibility to inform the jury on how to resolve a dispute among themselves.** JLK – overruled, it is the emphatic duty of the judge to maintain order and fairness in the deliberation process. This principle should not require further comment or authority.

**VERDICT FORM**

**THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

Criminal Case No. 08-cr-00436-JLK

UNITED STATES OF AMERICA,

Plaintiff,

v.

1. SIMON AMARO,

Defendant.

---

**VERDICT FORM**

---

We, the jury, upon our oaths, unanimously find the defendant, SIMON AMARO,  
in Count One of the indictment:

\_\_\_\_\_ Not Guilty

\_\_\_\_\_ Guilty

Dated this \_\_\_\_ day of \_\_\_\_\_, 2009.

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

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_