UNITED STATES DISTRICT COURT

DISTRICT OF HAWAII

UNITED STATES OF AMERICA, Plaintiff, vs. JASON TAGALOA (1), CRAIG PINKNEY (2), and JONATHAN TAUM (3), Defendants.	CR. NO. 20-00044 LEK

JURY INSTRUCTIONS

The jury instructions in the numerical order as read to the jury are attached hereto.

DATED: Honolulu, Hawaii, July 7, 2022.

/s/ Leslie E. Kobayashi
Leslie E. Kobayashi
United States District Judge

JURY INSTRUCTION NO. 1

Jurors: You now are the jury in this case, and I want to take a few minutes to tell you something about your duties as jurors and to give you some preliminary instructions.

When you deliberate, it will be your duty to weigh and to evaluate all the evidence received in the case and, in that process, to decide the facts. To the facts as you find them, you will apply the law as I give it to you, whether you agree with the law or not. You must decide the case solely on the evidence and the law before you.

Perform these duties fairly and impartially. You should not be influenced by any person's race, color, religious beliefs, national ancestry, sexual orientation, gender identity, gender, or economic circumstances. Also, do not allow yourself to be influenced by personal likes or dislikes, sympathy, prejudice, fear, public opinion, or biases, including unconscious biases. Unconscious biases are

stereotypes, attitudes, or preferences that people may consciously reject but may be expressed without conscious awareness, control, or intention. Like conscious bias, unconscious bias can affect how we evaluate information and make decisions.

JURY INSTRUCTION NO. 2

During the trial, I may have needed to take up legal matters with the attorneys privately, either by having a conference at the bench when the jury is present in the courtroom, or by calling a recess.

Please understand that while you were waiting, we were working. The purpose of these conferences is not to keep relevant information from you, but to decide how certain evidence is to be treated under the rules of evidence and to avoid confusion and error.

I may not have always granted an attorney's request for a conference. Do not consider my granting or denying a request for a conference as any indication of my opinion of the case or what your verdict should be.

JURY INSTRUCTION NO. 3

You have heard evidence that one or more of the defendants made a statement to a federal agent. It is for you to decide (1) whether the defendant made the statement, and (2) if so, how much weight to give to it. In making those decisions, you should consider all the evidence about the statement, including the circumstances under which the defendant may have made it.

JURY INSTRUCTION NO. 4

You have heard testimony from Avery Gomes who testified to both facts and opinions and the reasons for his opinions.

Fact testimony is based on what the witness saw, heard or did. Opinion testimony is based on the education or experience of the witness. As to the testimony about facts, it is your job to decide which testimony to believe and which testimony not to believe. You may believe everything a witness says, or part of it, or none of it.

As to the testimony about the witness's opinions, this opinion testimony is allowed because of the education or experience of this witness. Opinion testimony should be judged like any other testimony. You may accept all of it, part of it, or none of it. You should give it as much weight as you think it deserves, considering the witness's education and experience, the reasons given for the opinion, and all the other evidence in the case.

JURY INSTRUCTION NO. 5

The rules of evidence provide that if scientific, technical, or other specialized knowledge might assist the jury in understanding the evidence or in determining a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify and state his or her opinion concerning such matters.

You should consider each expert opinion received in evidence in this case and give it such weight as you may think it deserves. If you decide that the opinion of an expert witness is not based upon sufficient education and/or experience, or if you conclude that the reasons given in support of the opinion are not sound, or if you conclude that the opinion is outweighed by other evidence, then you may disregard the opinion entirely.

JURY INSTRUCTION NO. 6

Members of the Jury:

You have now heard all of the evidence in the case and will soon hear the final arguments of the lawyers for the parties.

It becomes my duty, therefore, to instruct you on the rules of law that you must follow and apply in arriving at your decision in the case.

In any jury trial there are, in effect, two judges. I am one of the judges; the other is the jury. It has been my duty to preside over the trial and to determine what testimony and evidence is relevant under the law for your consideration. It is now my duty to instruct you on the law applicable to the case.

JURY INSTRUCTION NO. 7

You, as jurors, are the judges of the facts. But in determining what happened in this case – that is, in reaching your decision as to the facts – it is your sworn duty to follow the law I am now defining for you. Unless otherwise stated, you should consider each instruction to apply separately and individually to each defendant on trial.

You must follow all of my instructions as a whole. You have no right to disregard or give special attention to any one instruction, or to question the wisdom or correctness of any rule I state to you. That is, 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 give it to you, regardless of the consequences.

It is also your duty to base your verdict solely upon the testimony and evidence in the case, without prejudice or sympathy. That was the promise you made and the oath you took before being accepted by the

parties as jurors in this case, and they have the right to expect nothing less.

JURY INSTRUCTION NO. 8

The indictment or formal charge against a defendant is not evidence. Each defendant is presumed to be innocent and does not have to present any evidence to prove innocence. The government has the burden of proving every element of each charge beyond a reasonable doubt. If it fails to do so, you must return a not guilty verdict on that charge.

While the government's burden of proof is a strict or heavy burden, it is not necessary that a defendant's guilt be proved beyond all possible doubt. It is only required that the government's proof exclude any "reasonable doubt" concerning a defendant's guilt.

A reasonable doubt is a doubt based upon reason and common sense, and may arise from a careful and impartial consideration of all the evidence, or from lack of evidence. Proof beyond a reasonable doubt is proof that leaves you firmly convinced that a defendant is guilty.

If after a careful and impartial consideration with your fellow jurors of all the evidence, you are not convinced beyond a reasonable doubt that a defendant is guilty, it is your duty to find that defendant not guilty. On the other hand, if after a careful and impartial consideration with your fellow jurors of all the evidence, you are convinced beyond a reasonable doubt that a defendant is guilty, it is your duty to find that defendant guilty.

JURY INSTRUCTION NO. 9

One of the defendants has testified. You should treat a defendant's testimony just as you would the testimony of any other witness.

JURY INSTRUCTION NO. 10

A defendant in a criminal case has a constitutional right not to testify. You may not draw any inference of any kind from the fact that a defendant did not testify.

JURY INSTRUCTION NO. 11

As stated earlier, it is your duty to determine the facts, and in doing so, you must consider only the evidence I have admitted in the case. The term "evidence" includes the sworn testimony of the witnesses and the exhibits admitted in the record.

Remember that any statements, objections, or arguments made by the lawyers are not evidence in the case. The function of the lawyers is to point out those things that are most significant or most helpful to their side of the case, and in doing so, to call your attention to certain facts or inferences that might otherwise escape your notice.

In the final analysis, however, it is your own recollection and interpretation of the evidence that controls in the case. What the lawyers say is not binding upon you.

JURY INSTRUCTION NO. 12

Rules of evidence control what can be received into evidence. During the course of trial, when a lawyer asked a question or offered an exhibit into evidence and a lawyer on the other side thought that it was not permitted by the rules of evidence, that lawyer may have objected. If I overruled an objection, the question was answered or the exhibit received. If I sustained an objection, the question was not answered and the exhibit was not received.

Whenever I sustained an objection to a question, you must not speculate as to what the answer might have been or as to the reason for the objection. You must not consider for any purpose any offer of evidence that was rejected, or any evidence that was stricken from the record; such matter is to be treated as though you had never known of it.

JURY INSTRUCTION NO. 13

During the course of the trial I may have occasionally made comments to the lawyers, or asked questions of a witness, or admonished a witness concerning the manner in which he or she should respond to the questions of counsel. Do not assume from anything I said that I have any opinion concerning any of the issues in this case. Except for my instructions to you on the law, you should disregard anything I said during the trial in arriving at your own findings as to the facts.

JURY INSTRUCTION NO. 14

Evidence may be direct or circumstantial. Direct evidence is direct proof of a fact, such as the testimony of an eyewitness. Circumstantial evidence is indirect evidence, that is, proof of a chain of facts from which you could find that another fact exists, even though it has not been proved directly.

So, while you should consider only the evidence in the case, you are permitted to draw such reasonable inferences from the testimony and exhibits as you feel are justified in the light of common experience. In other words, you may make deductions and reach conclusions which reason and common sense lead you to draw from the testimony and evidence in the case.

You are to consider both direct and circumstantial evidence. The law permits you to give equal weight to both, but it is for you to decide how much weight to give to any evidence.

JURY INSTRUCTION NO. 15

Now, I have said that 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 his or her testimony. In evaluating the testimony of a witness, you may consider: (1) the opportunity and ability of the witness to see or hear or know the things testified to; (2) the witness's memory; (3) the witness's manner while testifying; (4) the witness's interest in the outcome of the case, if any; (5) the witness's bias or prejudice, if any; (6) whether other evidence contradicted the witness's testimony; (7) the reasonableness of the witness's testimony in light of all the evidence; and (8) any other factors that bear on believability. You may accept or reject the testimony of any witness in whole or in part. That is, you may believe everything a witness says, or part of it, or none of it.

Also, the weight of the evidence is not necessarily determined by the number of witnesses testifying as to the existence or non-existence of any fact. You may find that the testimony of a smaller number of witnesses as to any fact is more credible than the testimony of a larger number of witnesses to the contrary.

JURY INSTRUCTION NO. 16

A witness may be discredited or impeached by contradictory evidence by a showing that: (1) the witness testified falsely concerning a material matter; or (2) at some other time, the witness said or did something that is inconsistent with the witness' present testimony; or (3) at some other time, the witness failed to say or do something that would be consistent with the present testimony had it been said or done.

If you believe that any witness has been so impeached, then it is for you alone to decide how much credibility or weight, if any, to give to the testimony of that witness.

JURY INSTRUCTION NO. 17

The fact that a witness has previously been convicted of a felony is also a factor you may consider in weighing the credibility of that witness. The fact of such a conviction does not necessarily destroy the witness' credibility, but is one of the circumstances you may take into account in determining the weight to give to the testimony.

JURY INSTRUCTION NO. 18

You have heard testimony from Mr. Jordan DeMattos, a witness who has pleaded guilty to a crime arising out of the same events for which the defendants are on trial. This guilty plea is not evidence against the defendants, and you may consider it only in determining this witness' believability. You should consider this witness' testimony with greater caution than that of other witnesses.

JURY INSTRUCTION NO. 19

The testimony of a correctional officer should be weighed and considered, and credibility determined, in the same way as that of any other witness. A correctional officer's testimony is not entitled to any greater weight, nor should you consider it more credible, than any other witness' testimony simply because it is given by a correctional officer.

JURY INSTRUCTION NO. 20

Counts One and Two of the Indictment charge the defendants with two separate violations of Title 18, United States Code, § 242. Where there is a reference to "Inmate 1", this refers to Chawn Kaili, and where there is a reference to "Officer A", this refers to Jordan DeMattos.

Count One reads:

On or about June 15, 2015, within the District of Hawaii, JASON TAGALOA, CRAIG PINKNEY, and JONATHAN TAUM, the defendants, and Officer A, while acting under color of law and while aiding and abetting one another, willfully deprived Inmate 1 of the right, secured and protected by the Constitution and laws of the United States, to be free from cruel and unusual punishment. Specifically, TAGALOA, PINKNEY, TAUM, and Officer A physically assaulted Inmate 1 in the HCCC's Rec Yard, and failed to intervene to protect Inmate 1 from being assaulted, despite having had the opportunity to do so.

This offense resulted in bodily injury to Inmate 1 and involved the use of dangerous weapons (shod feet).

All in violation of Title 18, United States Code, Sections 242 and 2.

Count Two reads:

On or about June 15, 2015, within the District of Hawaii, JASON TAGALOA, the defendant, while acting under color of law, willfully deprived Inmate 1 of the right, secured and protected by the Constitution and laws of the United States, to be free from cruel and unusual punishment. Specifically, TAGALOA physically assaulted Inmate 1 in the F7 holding cell of HCCC's Punahele complex. This offense resulted in bodily injury to Inmate 1.

JURY INSTRUCTION NO. 21

Counts One and Two of the Indictment have four elements:

First, the defendant acted under color of law;

Second, the defendant deprived Chawn Kaili of his Eighth Amendment right to be free from cruel and unusual punishment;

Third, the defendant acted willfully; and

Fourth, the charged conduct resulted in bodily injury to Chawn Kaili, or the offense involved the use of a dangerous weapon.

JURY INSTRUCTION NO. 22

The first element of Counts One and Two of the Indictment requires the government to prove that the defendants acted under color of law. A person acts "under color of law" when the person acts or purports to act in the performance of official duties under any state, county, or municipal law, ordinance or regulation. If you find that the defendants were acting in their official capacity as Hawaii correctional officers when they committed the acts charged in Counts 1 and 2, then you may find that they acted "under color of law," even if you conclude that they misused or abused the authority given to them.

JURY INSTRUCTION NO. 23

The second element of Counts One and Two of the Indictment requires the government to prove that the defendants deprived Chawn Kaili of his rights under the Eighth Amendment to the Constitution.

Under the Eighth Amendment, a convicted prisoner has the right to be free from "cruel and unusual punishments." To establish a defendant deprived the prisoner of his Eighth Amendment right, the government must prove the following beyond a reasonable doubt.

1. a defendant used excessive and unnecessary force under all of the circumstances;

2. a defendant acted maliciously and sadistically for the purpose of causing harm, and not in a good faith effort to maintain or restore discipline; and

3. the act or acts of a defendant caused harm to the prisoner.

In determining whether these three have been met in this case, consider the following factors:

(1) the extent of the injury suffered;

(2) the need to use force;

(3) the relationship between the need to use force and the amount of force used;

(4) any threat reasonably perceived by a defendant; and

(5) any efforts made to temper the severity of a forceful response, such as, if feasible, providing a prior warning or giving an order to comply.

As to Count 1 only, a defendant may be found guilty of deprivation of a constitutional right, even if a defendant personally did not commit the act or acts constituting the crime but aided and abetted in its commission. To "aid and abet" means intentionally to help someone else commit a crime. To prove a defendant guilty of Count 1 by aiding and abetting, the government must prove each of the following beyond a reasonable doubt:

First, someone else committed the crime charged in Count 1;

Second, a defendant aided, counseled, commanded, induced, or procured that person with respect to at least one element of Count 1;

Third, a defendant acted with the intent to facilitate the commission of Count 1;

Fourth, a defendant acted before the crime was completed.

It is not enough that a defendant merely associated with the person committing the crime, or unknowingly or unintentionally did things that were helpful to that person or was present at the scene of the crime. The evidence must show beyond a reasonable doubt that the defendant acted with the knowledge and intention of helping that person commit the crime charged in Count 1.

A defendant acts with the intent to facilitate the crime when a defendant actively participates in a criminal venture with advance knowledge of the crime

and having acquired that knowledge when a defendant still had a realistic opportunity to withdraw from the crime.

The government is not required to prove precisely which defendant actually committed the crime and which defendant aided and abetted.

A defendant may be found guilty of Count One even if the defendant did not personally commit the acts constituting the crime if the defendant willfully caused an act to be done that if directly performed by him would constitute the crime charged in Count One. A defendant who puts in motion or causes the commission of an indispensable element of the offense charged in Count One may be found guilty as if he had committed this element himself.

Correctional officers have a duty to intercede when another correctional officer violates the constitutional rights of a prisoner. A correctional officer who observed another correctional officer using cruel and unusual punishment, had a reasonable

opportunity to intervene, and chose not to do so would be responsible for depriving the prisoner of his Eighth Amendment constitutional rights.

JURY INSTRUCTION NO. 24

The third element of Counts One and Two of the Indictment requires the government to prove that the defendants acted willfully. "Willfully" means that a defendant acted voluntarily and intentionally, with the intent not only to act with a bad or evil purpose, but specifically to act with the intent to deprive Chawn Kaili of his Eighth Amendment right to be free from cruel and unusual punishment. An officer acts with that specific intent if he intentionally uses force that he knows to be unlawful.

This does not mean that the government must show that a defendant acted with knowledge of that particular provision of the Eighth Amendment to the Constitution, or that a defendant was even thinking about the Eighth Amendment when he acted.

A person may be said to act willfully if he acts in open defiance or in reckless disregard of the right to be free from cruel and unusual punishment. This specific intent to deprive another of a constitutional

right need not be expressed; it may at times be reasonably inferred from the surrounding circumstances of the act. Thus, you may look at a defendant's words, experience, knowledge, acts and the results from any of these things in order to decide the issue of willfulness.

If you find that a defendant had the purpose to deprive Chawn Kaili of his Eighth Amendment right to be free from cruel and unusual punishment, or that the defendant acted in open defiance or reckless disregard of that right, then that defendant acted willfully. By contrast, if you find a defendant acted through mistake, carelessness, or accident, then that defendant did not act willfully.

JURY INSTRUCTION NO. 25

Policies, procedures, and training from the Hawai'i Department of Public Safety have been received in evidence.

This evidence has been admitted for the limited purpose only – to assist you in determining whether any defendant acted "willfully". If you find that a defendant followed policies, procedures, and his training, then you may conclude that he acted in good faith and therefore did not act willfully. If you find that a defendant violated policies, procedures, or his training, then you may conclude that he acted in bad faith and therefore acted willfully.

If you determine that a defendant violated any policies, procedures, or his training, then you should consider that evidence only in determining whether that defendant acted willfully and you must not consider violation of any policies, procedures, or his training

in deciding whether that defendant violated Chawn Kaili's constitutional right.

JURY INSTRUCTION No. 26

The fourth and final element of Counts One and Two requires the government to prove either that the offense resulted in bodily injury to Chawn Kaili, or that the offense involved the use of a dangerous weapon.

"Bodily injury" means (A) a cut, abrasion, bruise, burn, or disfigurement; (B) physical pain; or (C) any other injury to the body, no matter how temporary. The government does not need to prove that a defendant *intended* to cause bodily injury. The government must prove that bodily injury resulted from the charged offense, and that such bodily injury was a natural and foreseeable result of the offense conduct.

The dangerous weapon the defendants are charged with using is a shod foot, which is a foot covered by a shoe or boot. A shod foot is a dangerous weapon if it is used in a way that is capable of causing death or serious bodily injury. The government does not need to prove that the shod foot *actually caused* death or

serious bodily injury. The government must prove only that the shod foot was used in the charged offense, and that it was capable of inflicting death or serious bodily injury.

The government has to prove either that the offense resulted in bodily injury or that a dangerous weapon was used.

JURY INSTRUCTION NO. 27

With respect to Count 1, the defendant contends that his conduct was justified. Justification legally excuses the crime charged. The defendant must prove justification by a preponderance of the evidence. A preponderance of the evidence means that you must be persuaded that the things the defendant seeks to prove are more probably true than not true. This is a lesser burden of proof than the government's burden to prove beyond a reasonable doubt each element of Count 1.

A defendant's conduct was justified only if at the time of the crime charged:

1. the defendant was under an unlawful and present threat of death or serious bodily injury;

2. the defendant did not recklessly place himself in a situation where he would be forced to engage in criminal conduct;

3. the defendant had no reasonable legal alternative; and

4. there was a direct causal relationship between the conduct and avoiding the threatened harm. If you find that each of these things has been proved by a preponderance of the evidence, you must find the defendant not guilty of Count 1.

JURY INSTRUCTION NO. 28

With respect to Count 1, the defendant has offered evidence of having acted in self-defense. Use of force is justified when a person reasonably believes that it is necessary for the defense of oneself or another against the immediate use of unlawful force. However, a person must use no more force than appears reasonably necessary under the circumstances. Force likely to cause death or great bodily harm is justified in self-defense only if a person reasonably believes that such force is necessary to prevent death or great bodily harm. With respect to Count 1, the government must prove beyond a reasonable doubt that the defendant did not act in reasonable self-defense.

JURY INSTRUCTION No. 29

Count Three reads:

On or about and between June 15, 2015 and December 20, 2016, both dates being approximate and inclusive, within the District of Hawaii, JASON TAGALOA, CRAIG PINKNEY, JONATHAN TAUM, the defendants, and Officer A knowingly and willfully combined, conspired, and agreed with one another and with other correctional officers known and unknown to the Grand Jury to commit the following offenses against the United States:

a. To knowingly falsify, conceal, cover up, or make a false entry in a record or document with the intent to impede, obstruct, or influence the investigation or proper administration of a matter within federal jurisdiction, or in relation to or in contemplation of such a matter, in violation of 18 U.S.C. § 1519; and

b. To knowingly engage in misleading conduct toward another person with the intent to hinder, delay, or prevent the communication to a federal law

enforcement officer or judge of truthful information relating to the commission or possible commission of a federal offense, in violation of 18 U.S.C. § 1512(b)(3).

Manner and Means of the Conspiracy

TAGALOA, PINKNEY, TAUM, and Officer A intended to cover up the assault on Inmate 1 charged in Count 1 of this Indictment, and to obstruct any investigation arising out of that assault, by engaging in a variety of obstructive acts, including devising a false cover story to explain and justify their use of excessive force, documenting that false cover story in official reports, and repeating that false cover story when questioned during investigations or disciplinary proceedings arising out of the assault.

Overt Acts Committed in Furtherance of the Conspiracy

In furtherance of the conspiracy and to effect the objects thereof, TAGALOA, PINKNEY, TAUM, and Officer A committed the following overt acts, among others, within the District of Hawaii:

a. After the assault charged in Count 1 of this Indictment, TAGALOA, PINKNEY, TAUM, and Officer A met to discuss what information to include in, and what information to omit from, the Incident Report ("IR") and Use of Force Report ("UFR") completed by each of the Officers;

b. Before the end of their shifts, the Officers wrote and submitted the false and misleading IRs and UFRs charged in Counts 4-6 of this Indictment;

c. After learning that an internal investigation had been or soon would be opened to investigate the assault on Inmate 1 charged in Count 1 of this Indictment, TAUM invited TAGALOA, PINKNEY, and Officer A to his house so that the Officers could devise ways in which to explain and justify their use of excessive force against Inmate 1 in the Waianuenue Rec Yard;

d. In advance of that meeting, TAUM obtained a copy of HCCC surveillance video of the assault on Inmate 1;

e. At that meeting, TAGALOA, PINKNEY, TAUM, and Officer A watched video of the assault and devised and agreed upon ways in which to explain and justify their use of excessive force against Inmate 1. For example, in order to explain and justify their use of untrained strikes, such as kicking and punching Inmate 1 in the face, head, and body, the Officers agreed to state that Inmate 1 was not subdued by trained strikes;

f. When the Officers received their Internal Affairs Questionnaires, they discussed with one another ways in which to apply their false cover story to specific questions posed to them;

g. Officer A wrote and submitted an Internal Affairs Questionnaire in which he continued to stick to the false cover story they had discussed during the meeting at the house of TAUM and at other times; and

h. During the ensuing disciplinary proceedings, TAGALOA and Officer A testified and continued to stick to the false cover story they had

discussed during the meeting at the house of TAUM and at other times.

All in violation of Title 18, United States Code, Section 371.

JURY INSTRUCTION NO. 30

The defendants are charged in Count Three of the indictment with conspiring to obstruct justice in violation of Section 371 of Title 18 of the United States Code. For any defendant to be found guilty of that charge, the government must prove each of the following elements beyond a reasonable doubt:

First, during the period beginning on or about June 15, 2015, and ending on or about December 20, 2016, there was an agreement between two or more persons to commit at least one of the crimes listed in Count Three of the indictment;

Second, the defendant became a member of the conspiracy, knowing of at least one of its objectives and intending to help accomplish it; and

Third, one of the members of the conspiracy, during the conspiracy, performed at least one overt act listed in Count Three of the indictment, and did so for the purpose of carrying out the conspiracy.

A conspiracy is a kind of criminal partnership—an agreement of two or more persons to commit one or more crimes. The defendants are charged with conspiring to violate two federal obstruction statutes: 18 U.S.C. § 1512(b)(3) and 18 U.S.C. § 1519. The first obstruction statute—§ 1512(b)(3)—has four elements:

First, that the person knowingly engaged in misleading conduct towards another person;

Second, that the person acted with the intent to hinder, delay, or prevent the communication of information to a federal official;

Third, that there was a reasonable likelihood that the communication would reach a federal official; and

Fourth, that the information at issue related to the commission or the possible commission of a federal crime.

The second obstruction statute—§ 1519—has two elements. The defendants are each separately charged—in Counts Four through Six—with *actually* committing Section 1519 violations, so I will explain the elements

of that crime to you in a moment, when I get to those counts.

You may find the defendants guilty of conspiracy even if you conclude that they did not commit either of the obstruction crimes they are accused of conspiring to commit. That is because the crime of conspiracy is the agreement to do something unlawful; it does not matter whether the crime agreed upon was actually committed.

For a conspiracy to have existed, it is not necessary that the conspirators made a formal agreement or that they agreed on every detail of the conspiracy. It is not enough, however, that they simply met, discussed matters of common interest, acted in similar ways, or perhaps helped one another. You must find that there was a plan to commit at least one of the crimes alleged to be an object of the conspiracy, and all of you must agree as to the particular crime the conspirators agreed to commit.

One becomes a member of a conspiracy by willfully participating in the unlawful plan with the intent to advance or further some object or purpose of the conspiracy, even if the person does not have full knowledge of all the details of the conspiracy. Furthermore, one who willfully joins an existing conspiracy is as responsible for it as the originators. On the other hand, one who has no knowledge of a conspiracy, but happens to act in a way which furthers some object or purpose of the conspiracy, does not thereby become a conspirator. Similarly, a person does not become a conspirator merely by associating with one or more persons who are conspirators, nor merely by knowing that a conspiracy exists.

An overt act does not itself have to be unlawful. A lawful act may be an element of a conspiracy if it was done for the purpose of carrying out the conspiracy. The government is not required to prove that a particular defendant

personally did one of the overt acts; rather, it must simply prove that any member of the conspiracy did at least one of the charged overt acts.

JURY INSTRUCTION NO. 31

Count Four reads:

On or about June 15, 2015, within the District of Hawaii, JASON TAGALOA, the defendant, acting in relation to and in contemplation of a matter within the jurisdiction of the United States, knowingly falsified, concealed, covered up, and made a false entry in a record and document with the intent to impede, obstruct, and influence the investigation and proper administration of that matter. Specifically, TAGALOA wrote, signed, and submitted an IR and a UFR documenting a false cover story intended to cover up the assaults charged in Count 1 and 2 of this Indictment. In the IR, TAGALOA wrote, in pertinent part, that the Officers used "brachial stuns and brachial plex[u]s tie in strikes to gain compliance so inmate could be restrain[e]d." In the UFR, in response to the prompt, "Describe in Detail Force Used (the type and amount)," TAGALOA wrote, "Reactive [u]se of force [was used] to gain control/compliance." Those reports

were false and misleading because, as TAGALOA then well knew, (1) the Officers did not perform "brachial stuns and brachial plex[u]s tie in strikes," which are use-of-force techniques taught at HCCC, but rather kicked and kneed Inmate 1, punched him in the face, and used hammer-fist strikes to the back of his head; (2) the Officers, at various points during the incident, used force against Inmate 1 that was not "reactive" (because Inmate 1 was not resisting) and was not used "to gain control/compliance" (because Inmate 1 had already been subdued); (3) TAGALOA omitted from both reports that for several minutes, during much of which the Officers held Inmate 1 pinned face-down on the ground of the Rec Yard, TAGALOA, PINKNEY, TAUM, and Officer A punched, kneed, and kicked Inmate 1 in the face, head, and body dozens of times; and (4) TAGALOA omitted from both reports that he physically assaulted Inmate 1 in the F7 holding cell, as charged in Count 2 of this Indictment.

All in violation of Title 18, United States Code, Section 1519.

Count Five reads:

On or about June 15, 2015, within the District of Hawaii, CRAIG PINKNEY, the defendant, acting in relation to and in contemplation of a matter within the jurisdiction of the United States, knowingly falsified, concealed, covered up, and made a false entry in a record and document with the intent to impede, obstruct, and influence the investigation and proper administration of that matter. Specifically, PINKNEY wrote, signed, and submitted a UFR documenting a false cover story intended to cover up the assault charged in Count 1 of this Indictment. In response to the prompt, "Describe in Detail Force Used (the type and amount)," PINKNEY wrote, "Inmate was removed from the Waianuenue housing unit and escorted to the Punahele housing unit through the Waianuenue rec yard. Inmate became ag[g]ressive and violent towards staff and was taken down." That report was false and misleading because, as PINKNEY then well knew, (1) Inmate 1 was not violent or aggressive with the Officers before they took him to

the ground; and (2) PINKNEY omitted from that report that for several minutes, during much of which the Officers held Inmate 1 pinned face-down on the ground of the Rec Yard, TAGALOA, PINKNEY, TAUM, and Officer A punched, kneed, and kicked Inmate 1 in the face, head, and body dozens of times.

All in violation of Title 18, United States Code, Section 1519.

Count Six reads:

On or about June 15, 2015, within the District of Hawaii, JONATHAN TAUM, the defendant, acting in relation to and in contemplation of a matter within the jurisdiction of the United States, knowingly falsified, concealed, covered up, and made a false entry in a record and document with the intent to impede, obstruct, and influence the investigation and proper administration of that matter. TAUM wrote, signed, and submitted an IR and a UFR documenting a false cover story intended to cover up the assault charged in Count 1 of this Indictment.

In his IR, TAUM wrote, in pertinent part, that right before Inmate 1 "was taken to the ground to be restrained," Inmate 1 "turned and tried to run back to Waianuenue." In his UFR, TAUM wrote, in response to the prompt, "Describe the Incident in Detail," that during transfer to a different cell, Inmate 1 "attempted to run and resisted transfer[,] . . . was taken down and restrained[,] . . . [and] resisted the entire time." Those reports were false and misleading because, as TAUM then well knew, (1) Inmate 1 did not turn and try to run before he was taken to the ground; (2) once Inmate 1 was on the ground, he resisted for a brief period but did not resist for "the entire time" the Officers were using force against him; and (3) TAUM omitted from both reports that for several minutes, during much of which the Officers held Inmate 1 pinned face-down on the ground of the Rec Yard, TAGALOA, PINKNEY, TAUM, and Officer A punched, kneed, and kicked Inmate 1 in the face, head, and body dozens of times.

All in violation of Title 18, United States Code, Section 1519.

JURY INSTRUCTION NO. 32

The defendants are charged in Counts Four, Five, and Six of the indictment with obstruction of justice in violation of Section 1519 of Title 18 of the United States Code. For any defendant to be found guilty of a violation of this statute, the government must prove each of the following elements beyond a reasonable doubt:

First, that the defendant knowingly falsified, concealed, covered up, or made a false entry in a record or document; and

Second, that the defendant acted with the intent to impede, obstruct, or influence an actual or contemplated investigation of a matter within the jurisdiction of any department or agency of the United States.

I hereby instruct you that reports prepared by law enforcement officers qualify as "records" or "documents." A person may falsify or make a false entry in a record or document by including within that

record or document any untrue statement, or by omitting from that document or record any material fact.

The government does not have to prove that a defendant knew that the investigation or contemplated investigation he was obstructing was federal in nature. Rather, the government must prove that the matter a defendant intended to obstruct falls within the jurisdiction of a federal department or agency.

Finally, there is no requirement that the matter or investigation was pending or imminent at the time of the obstruction, but only that the acts were taken in relation to or in contemplation of any such matter or investigation.

JURY INSTRUCTION NO. 33

You will note that the indictment charges that the offenses were committed "on or about" certain dates. The evidence need not establish with certainty the exact date of an alleged offense. It is sufficient if the evidence in the case establishes beyond a reasonable doubt that an offense was committed on a date reasonably near the date alleged.

JURY INSTRUCTION NO. 34

A separate crime or offense is charged against one or more of the defendants in each count of the indictment. Each offense, and the evidence pertaining to it, should be considered by you separately. Also, the case of each defendant should be considered by you separately and individually. The fact that you may find one of the defendants guilty or not guilty of any of the offenses charged may not control your verdict as to any other offense or any other defendant.

I caution you, members of the jury, that you are here to determine whether each of the defendants is guilty or not guilty from the evidence in this case.

The defendants are not on trial for any act or conduct or offense not alleged in the indictment. Nor are you called upon to return a verdict as to the guilt of any other person or persons not on trial as a defendant in this case.

Also, the punishment provided by law for the offenses charged in the indictment is a matter

exclusively within the province of the judge, and should never be considered by the jury in any way in arriving at an impartial verdict.

JURY INSTRUCTION NO. 35

Some of you took notes during the trial. Whether or not you took notes, you should rely on your own memory of what was said. Notes are only to assist your memory. You should not be overly influenced by your notes or those of other jurors.

JURY INSTRUCTION NO. 36

Remember that even during your deliberations, my mandate to you still applies that you not read any news stories or articles, listen to any radio, or watch any television reports about the case or about anyone who has anything to do with it. Do not do any research, such as consulting dictionaries, searching the internet, or using other reference materials, and do not make any investigation about the case on your own. And do not discuss the case in any manner with others, directly or through social media. You may only discuss the case with your fellow jurors during your deliberations, with all twelve of you present.

JURY INSTRUCTION NO. 37

Your verdict must represent the considered judgment of each juror. In order to return a verdict, it is necessary that each juror agree thereto. In other words, your verdict must be unanimous.

It is your duty as jurors to consult with one another, and to deliberate in an effort to reach agreement if you can do so without violence to individual judgment. Each of you must decide the case for yourself, but only after an impartial consideration of the evidence in the case with your fellow jurors.

In the course of your deliberations, do not hesitate to re-examine your own views and change your opinion if convinced it is erroneous. But do not surrender your honest conviction as to the weight or effect of the evidence solely because of the opinion of your fellow jurors, or for the mere purpose of returning a verdict.

Remember at all times, you are not partisans. You are judges - judges of the facts. Your sole interest is to seek the truth from the evidence in the case.

JURY INSTRUCTION NO. 38

Upon retiring to the jury room you should first select one juror to act as your foreperson who will preside over your deliberations and will be your spokesperson here in court. A verdict form has been prepared for your convenience.

(Explain Verdict Form)

You will take the verdict form to the jury room and when you have reached unanimous agreement as to your verdicts, you will have your foreperson fill it in, date and sign it, and then return to the courtroom.

If, during your deliberations, you desire to communicate with the court, please put your message or question in a note, have the foreperson sign the note, and pass the note to the marshal who will bring it to my attention. I will then respond as promptly as possible, either in writing or by having you return to the courtroom so that I can address you orally. I caution you, however, that you should never state or specify your numerical division at any time. For

example, you should never state that "x" number of jurors are leaning or voting one way and "x" number of jurors are leaning or voting another way.