

1 **IN THE UNITED STATES DISTRICT COURT**
2 **FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

3
4
5 **UNITED STATES OF AMERICA,**

6
7 **Plaintiff,**

8
9 **v.**

Crim. Action No. 1:22-CR-52
 (Judge Kleeh)

10
11
12 **LANCE KURETZA,**

13
14 **Defendant.**

15
16
17 **INSTRUCTIONS OF LAW TO THE JURY**
18 _____

19 **Introduction**

20 Now that you have heard the evidence, it is my job to tell
21 you about the laws that apply to this case. As jurors, you have
22 two jobs. First, you must determine from the evidence what the
23 facts of this case are. Second, you must apply the rules of law,
24 which I will give you, to those facts in order to determine the
25 innocence or guilt of **Lance Kuretza** with respect to the crimes
26 charged in the Indictment.

27 I will be sending a copy of these instructions to the jury
28 room with you; however, you are not to single out any one
29 instruction as stating the law, but must consider the instructions
30 as a whole.

31 The Judge has no right to tell the jury what facts have been
32 established by the evidence. In turn, the jury has no right to
33 make decisions as to what the law is that applies to this trial.

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Indictment Is Not Evidence

As I earlier indicated to you, an indictment is but a formal method of accusing a defendant of a crime. It is not evidence of any kind against the defendant and does not create any presumption or permit any inference of guilt. It is merely the formal means by which the Government accuses an individual of a crime in order to bring that individual to trial. The defendant has answered the charges in this trial by pleading not guilty, and you must not be prejudiced against the defendant because an indictment has been filed.

Evidence Generally

There are two types of evidence which are generally presented during a trial: direct evidence and circumstantial evidence. Direct evidence is the testimony of a person who asserts or claims to have actual knowledge of a fact, such as an eyewitness. Circumstantial evidence is proof of a chain of facts and circumstances indicating the existence of some further fact which, in a criminal case, may bear on the guilt or innocence of a defendant.

As a general rule, the law makes no distinction between the weight to be given to either direct or circumstantial evidence, but simply requires that, before convicting an accused, the jury

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1 be satisfied of the accused's guilt beyond a reasonable doubt from
2 all of the evidence in the case. Furthermore, no greater degree
3 of certainty is required of circumstantial evidence than is
4 required of direct evidence.

5 Inferences are deductions or conclusions that reason and
6 common sense lead you to draw, based on the facts that have been
7 established by the evidence in the case. Common sense is no
8 substitute for evidence, but common sense should be used by you to
9 evaluate what reasonably may be inferred from circumstantial
10 evidence. Therefore, you are permitted to use your common sense
11 in evaluating all of the evidence, including circumstantial
12 evidence, that the Government has presented to you in an attempt
13 to prove beyond a reasonable doubt the guilt of **Lance Kuretza**.

14 The evidence in this case consists of the sworn testimony of
15 all witnesses, regardless of who may have called them; all exhibits
16 received in evidence, regardless of who may have produced them;
17 and all facts that were admitted.

18 Questions, statements, and arguments of counsel are not
19 evidence in the case. Further, no statement, ruling, question,
20 remark, or comment which I have made during the course of the trial
21 was intended to indicate my opinion as to how you should decide
22 the case or to influence you in any way in your determination of

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1 the facts, nor should you draw any inferences from anything I may
2 have said. You alone are to judge for yourselves the questions of
3 fact in this case.

4 Any evidence as to which an objection was sustained by the
5 Court, and any evidence ordered stricken by the Court, must be
6 entirely disregarded, or considered only for the limited purposes
7 for which the evidence was admitted.

8 Anything you may have seen or heard outside of the courtroom
9 is not evidence and must be entirely disregarded.

10 You are to consider only the evidence in this case. But in
11 your consideration of the evidence, you are not limited to the
12 mere statements of the witnesses. In other words, you are not
13 limited solely to what you have seen and heard as the witnesses
14 testified. You are permitted to draw, from the facts that you
15 find have been proven, such reasonable inferences as you feel are
16 justified in the light of your experience.

17 Neither by these instructions, nor by any ruling that I have
18 made, have I meant to indicate any opinion as to the facts of this
19 trial. The true facts of this trial are for you, the jury, to
20 decide.

Witnesses

21
22 You, as jurors, are the sole judges of the credibility of the

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witnesses and the weight their testimony deserves.

You are free to believe all, a portion, or none of a witness's testimony.

You should carefully scrutinize all of the testimony given, the circumstances under which each witness has testified, and every matter in evidence that tends to show whether a witness is worthy of belief. Consider each witness's intelligence, motive, and state of mind, as well as his or her demeanor and manner while on the stand. Consider the witness's ability to observe the matters as to which he or she has testified, and whether he or she impresses you as having an accurate recollection of these matters. Consider also any relation each witness may bear to either side of the case; the manner in which each witness might be affected by the verdict; and the extent to which, if at all, each witness's testimony is either supported or contradicted by the evidence in the case.

Inconsistencies or discrepancies in the testimony of any witness, or between the testimony of different witnesses, may or may not cause you, the jury, to discredit such testimony. Two or more persons witnessing an incident or a transaction may see or hear it differently. Innocent misrecollection, like failure of recollection, is not an uncommon experience. In weighing the effect of a discrepancy, always consider whether it pertains to a

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1 matter of importance or an unimportant detail and whether the
2 discrepancy results from innocent error or intentional falsehood.

3 The testimony of a witness may be discredited or impeached by
4 showing that the witness previously made statements that are
5 inconsistent with the witness's present testimony. The earlier
6 contradictory statements are admissible only to impeach the
7 credibility of the witness and not to establish the truth of these
8 statements. It is the province of the jury to determine the
9 credibility, if any, to be given the testimony of a witness who
10 has been impeached.

11 If you believe that any person testifying in this trial has
12 not told the truth, you may believe such parts of his or her
13 testimony as you believe to be true and reject such parts as you
14 believe to be false. The jury's duty is to determine, from all
15 the evidence presented, and all of the circumstances surrounding
16 this trial, what witnesses have testified truthfully, and what
17 ones, if any, have testified falsely.

18 Certainly, this Court does not mean to infer that any witness
19 who has testified before you has testified falsely or untruthfully.
20 All of the witnesses may have been giving you their very best
21 judgment and honest opinion as to those matters to which they have
22 testified.

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1 The jury will have to determine which testimony is more
2 satisfactory to you. Naturally, you may take into consideration
3 the opportunity of each witness to observe and to know the facts
4 concerning which his or her testimony was given.

5 **Prior Inconsistent Statements**

6 You have heard evidence that before the trial, witnesses made
7 statements that may be inconsistent with their testimony here in
8 court. You may consider an inconsistent statement made before the
9 trial only to help you decide how believable a witness' testimony
10 was here in court. If an earlier statement was made under oath,
11 then you can also consider the earlier statement as evidence of
12 the truth of whatever the witness said in the earlier statement.

13 **Number of Witnesses**

14 Your decision on the facts of this case should not be
15 determined by the number of witnesses testifying for or against a
16 party. You should consider all of the facts and circumstances in
17 evidence to determine which of the witnesses you choose to believe
18 or not believe. You may find that the testimony of a smaller
19 number of witnesses on one side is more credible than the testimony
20 of a greater number of witnesses on the other side.

21 **Credibility of Witnesses - Drug or Alcohol User**

22 The testimony of a drug or alcohol user may be examined and

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1 weighed with greater care than the testimony of a witness who does
2 not use drugs. The jury must determine whether the testimony of
3 the drug or alcohol user has been affected by drug or alcohol use
4 or the need for drugs or alcohol; whether this affects the
5 witness's ability to perceive events; and whether it affects the
6 witness's ability to accurately relate what happened.

7 **Law Enforcement Testimony**

8 During the course of this trial, you have heard the testimony
9 of people employed by the Government, including law enforcement
10 officers. Such witnesses do not stand in any higher station in
11 the community than other persons, and their testimony is not
12 entitled to any greater weight than that given to other witnesses.

13 A law enforcement officer who takes the witness stand subjects
14 his or her testimony to the same examination and the same tests
15 that any other witness does. In considering the testimony of a
16 law enforcement officer, you, the jury, should recall his or her
17 demeanor on the stand, his or her manner of testifying, and the
18 substance of his or her testimony, and then weigh and balance it
19 just as carefully as you would the testimony of any other witness.

20 **A Defendant's Election Not To Testify**

21 As I have stated, the law does not compel a defendant in a
22 criminal case to take the witness stand and testify. In this case,

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1 the defendant has exercised his right to remain silent and elected
2 not to testify. He is under no obligation to do so, and you must
3 not hold his silence against him in any way because, again, it is
4 the Government's burden to prove each essential element of the
5 charge against him beyond a reasonable doubt.

6 **Presumption of Innocence**

7 In resolving the issues before you, you must keep in mind
8 that, under the law of the United States, a defendant is presumed
9 to be innocent, and this presumption of innocence goes with the
10 defendant at every stage of the trial. Thus, a defendant, although
11 accused, begins the trial with no evidence against him. The
12 presumption of innocence alone is sufficient to acquit a defendant,
13 unless you are satisfied beyond a reasonable doubt of the
14 defendant's guilt after careful and impartial consideration of all
15 the evidence in the case.

16 **Burden of Proof**

17 In this case, as in every criminal case, the burden of proof
18 is upon the Government to establish, first, the fact that the
19 crimes charged were committed; and second, that the defendant on
20 trial is guilty of the commission of the particular crimes with
21 which he was charged in the Indictment beyond a reasonable doubt.
22 This burden never shifts to the defendant. It remains upon the

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1 Government throughout the trial.

2 If you find there is a conflict in the evidence on a fact or
3 circumstance tending to establish the guilt or innocence of the
4 defendant, a part of which is in favor of the theory of the
5 Government and a part of which is in favor of the theory of the
6 defendant, and the jury should entertain a reasonable doubt as to
7 which is true, then it is the duty of the jury in arriving at your
8 verdict to adopt the evidence, theory, and conclusion most
9 favorable to the defendant.

10 **Reasonable Doubt**

11 It is not required that the Government prove guilt beyond all
12 possible doubt. The test is one of reasonable doubt. A reasonable
13 doubt means in law just what the words imply, a doubt based upon
14 reason and common sense. The meaning of reasonable doubt is self-
15 evident. Therefore, the Court will not attempt to further define
16 the term.

17 **Proof of Knowledge or Intent**

18 The intent of a person or the knowledge that a person
19 possesses at any given time may not ordinarily be proved directly
20 because there is no way of directly scrutinizing the workings of
21 the human mind. In determining the issue of what a person knew or
22 what a person intended at a particular time, you may consider any

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1 statements made or act done or omitted by that person and all other
2 facts and circumstances received in evidence which may aid in your
3 determination of that person's knowledge or intent.

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

9 **Consciousness of Guilt**

10 Evidence that the defendant fabricated or suppressed
11 evidence, or attempted to do so, is a circumstance that, if proven,
12 may be considered by the jury as showing a consciousness of guilt
13 on the part of the defendant.

14 Whether or not evidence of the suppression or fabrication of
15 evidence points to a consciousness of guilt on his part and the
16 significance, if any, to be attached to any such evidence, are
17 matters exclusively within the province of the jury since you are
18 the sole judges of the facts of this case.

19 In your evaluation of this evidence of suppression or
20 fabrication of evidence, you may consider that there may be
21 reasons—fully consistent with innocence—that could cause a person
22 to act in that manner. Fear of law enforcement or a reluctance to

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1 become involved in an investigation or simple mistake may cause a
2 person who has committed no crime to act in that manner.

3 **Other Acts**

4 The Defendant is not on trial for any acts or crimes not
5 alleged in the Indictment. Evidence related to either of those
6 issues may only be considered for the limited purposes for which
7 it was admitted. Your job is limited to deciding whether the
8 Government has proven the crimes charged in the Indictment beyond
9 a reasonable doubt.

10 However, you have heard evidence related to certain acts which
11 may be similar to acts charged in the Indictment. You may not
12 consider this evidence in deciding if the defendant committed the
13 acts charged in the Indictment. You may consider this evidence for
14 other, very limited purposes, such as the following:

- 15 • to prove that the defendant had a motive or the
16 opportunity to commit the crimes charged in the
17 Indictment;
- 18 • to prove that the defendant had the state of mind or the
19 intent necessary to commit the crimes charged in the
20 Indictment;
- 21 • to prove that the defendant acted according to a plan or
22 in preparation to commit the crimes charged in the

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1 Indictment;

- 2 • to prove that the defendant knew what he was doing when
3 he committed the crimes charged in the Indictment;
4 • to prove the defendant's identity; and
5 • to prove that the defendant did not commit the crimes
6 charged in the Indictment by mistake or accident.

7 Do not conclude from this evidence that the defendant has bad
8 character in general or that, because the defendant may have
9 committed other similar acts, it is more likely that he committed
10 the crimes with which he is currently charged.

11 **Locations and Dates**

12 It is not necessary for the Government to prove the exact
13 location of the commission of alleged offenses. It is sufficient
14 if the evidence in the case establishes beyond a reasonable doubt
15 that the offenses were committed within the Northern District of
16 West Virginia.

17 You will note also that the Indictment charges that the
18 offenses were committed "on or about" a certain date. The proof
19 need not establish with certainty the exact date of the alleged
20 offenses. It is sufficient if the evidence in the case establishes
21 beyond a reasonable doubt that the offenses were committed on a
22 date reasonably near the dates alleged.

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Investigative Techniques

Some or all of you may have seen popular television shows such as CSI or Law & Order. The TV standards, and the capabilities of law enforcement as portrayed on TV and in the movies, do not apply here to this trial. Witness testimony, if believed by you, is sufficient to establish the charges in this case. Specific investigative techniques, such as DNA and fingerprints, are not required to be presented in order for you to find the defendant guilty of the charges in this case. In short, law enforcement or investigative techniques are simply not your concern. Rather, your concern is whether the evidence which was admitted proved the defendant's guilt beyond a reasonable doubt.

Verdict Based on Evidence

You are to return your verdict upon the basis of the evidence which was presented to you at the trial and in accordance with these instructions that I am in the process of giving to you. If the evidence in the case convinces you beyond a reasonable doubt that the defendant is guilty of the offenses charged in the Indictment, then it will be your duty to find him guilty of those counts.

On the other hand, if a reasonable doubt exists in your mind concerning the guilt of the defendant as to the offenses charged

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1 in the Indictment, then it will be your duty to find him not guilty
2 of those counts.

3 I caution you, members of the jury, that you are here to
4 determine whether the Government has proved or failed to prove the
5 guilt of the defendant as to the charges set forth in the
6 Indictment. The defendant is not on trial for any act or conduct
7 or offense not alleged in the Indictment. Neither are you called
8 upon to return a verdict as to the guilt or innocence of any other
9 person or persons not on trial as a defendant in this case.

10 It is your duty to base your verdict solely upon the testimony
11 and evidence in the case, without prejudice or sympathy. That was
12 the promise you made and the oath you took before being accepted
13 by the parties as jurors in this case, and they have the right to
14 expect nothing less.

15 **Limiting Instruction: Policies, Procedures, and Training Evidence**

16 Policies, procedures, and training from the Monongalia County
17 Sheriff's Office and the West Virginia State Police Academy have
18 been introduced into evidence. This evidence has been admitted for
19 a limited purpose. You may use it only to determine whether the
20 defendant acted willfully.

21 It is, of course, wholly up to you to determine whether the
22 defendant violated any rule or policy or whether he acted in a

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1 manner contrary to his training. I caution you that, even if you
2 find that the defendant violated any rules or policies or that he
3 acted against his training, not every instance of inappropriate
4 behavior on the part of a law enforcement officer rises to the
5 level of a federal constitutional violation. It is possible for a
6 law enforcement officer to violate departmental rules or policies
7 or to violate training principles without violating the United
8 States Constitution, just as it is possible for an officer to
9 violate the Constitution without violating a specific state law or
10 agency policy.

11 If you determine that the defendant violated any internal
12 departmental rule or policy or if you find that he acted contrary
13 to his training, you should consider that evidence only in
14 determining whether the defendant acted willfully, and not in
15 determining whether the defendant's actions violated the
16 Constitution in the first instance.

17 **Punishment**

18 The punishment provided by law for the offenses charged in
19 the Indictment is a matter which should never be considered by the
20 jury in any way in arriving at an impartial verdict as to the guilt
21 or innocence of the defendant.

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Instructions Regarding Specific Charges in the Indictment

I will now instruct you as to the law relating to the specific charges in the Indictment against **Lance Kuretza**.

Count One - Deprivation of Rights under Color of Law

Count One charges that on or about January 20, 2018 in Monongalia County, within the Northern District of West Virginia, **Lance Kuretza**, then a Deputy Sheriff with the Monongalia County Sheriff's Office, while acting under color of law, willfully deprived Q.G., a person known to the Grand Jury, of his right, secured by the Fourth Amendment to the United States Constitution, to be free from unreasonable seizures, by punching and elbowing Q.G. in the face, striking Q.G. and spraying Q.G. with pepper spray after Q.G. was handcuffed, and kneeling Q.G. while escorting him. The offense included the use of a dangerous weapon and resulted in bodily injury to Q.G., all in violation of Title 18, United States Code, Section 242.

Count One - Statute Involved

Count One, which I have just read to you, is brought under Title 18, United States Code, Section 242. This statute states, in relevant part: "Whoever, under color of any law . . . willfully subjects any person in any State . . . to the deprivation of any rights, privileges, or immunities secured or protected by the

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1 Constitution or laws of the United States" shall be guilty of an
2 offense against the United States.

3 **Count One - Essential Elements**

4 To find the defendant guilty of **Count One** of the Indictment,
5 the Government must prove the following elements beyond a
6 reasonable doubt:

7 First: The defendant acted under color of law;

8 Second: The defendant deprived the victim, Q.G., of a right
9 secured or protected by the Constitution or laws of
10 the United States - here, the right of Q.G. to be
11 free from unreasonable seizures, which includes the
12 right to be free from the use of unreasonable force
13 by one acting under color of law;

14 Third: The defendant acted willfully; and,

15 Fourth: That the defendant used a dangerous weapon or that
16 the defendant's conduct resulted in bodily injury
17 to Q.G.

18 **First Element: Color of Law**

19 The first element of the offense charged in Count One requires
20 the government to prove beyond a reasonable doubt that the
21 defendant acted under color of law. A person acts under color of
22 law if he is an official or employee of a federal, state, or local

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1 government and he uses or abuses power he possesses because of his
2 official position. A government official, such as a Deputy
3 Sheriff, acts "under color of law" if he is performing his official
4 duties, purporting to perform those duties, or giving the
5 appearance of performing such official duties, even if he misuses
6 or abuses his official authority by doing something the law
7 forbids. In other words, if a Deputy Sheriff misuses the power,
8 invested in him by the law, to deprive someone of his rights, his
9 actions are taken under color of law.

10 If you find, beyond a reasonable doubt, that the defendant
11 was a Deputy Sheriff and he acted, or purported to act, as a Deputy
12 Sheriff during the incident alleged to have occurred on January
13 20, 2018, then you may find that he acted under color of law and
14 the first element of Count One has been satisfied.

15 **Second Element: Deprivation of Protected Right**

16 The second element of the offense charged in Count One
17 requires the government to prove beyond a reasonable doubt that
18 the defendant deprived Q.G. of a right secured or protected by the
19 Constitution or laws of the United States.

20 The Indictment alleges that the defendant deprived Q.G. of
21 his right to be free from unreasonable seizures, which includes
22 the right of an arrestee to be free from the use of unreasonable

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1 force by one acting under color of law. You are instructed that
2 this right is one secured and protected by the Constitution and
3 laws of the United States.

4 The Constitution prohibits the use of unreasonable or
5 excessive force by a law enforcement officer making an arrest,
6 even when the arrest is otherwise proper. Not every use of force
7 by a law enforcement officer against an arrestee is
8 unconstitutional. An officer may use force to maintain his safety
9 and the safety of other officers, to prevent escape, or to
10 accomplish other legitimate law enforcement objectives. An officer
11 may not use more force than is reasonably necessary to accomplish
12 such objectives. The test for reasonableness is an objective one,
13 meaning that you should consider all of the facts and circumstances
14 from the point of view of an ordinary and reasonable officer in
15 the same position as the defendant.

16 If you find that the defendant used force against Q.G., then
17 you must determine if that force was reasonable. In making this
18 decision, you may consider, among other factors, the severity of
19 the crime, if any, committed by Q.G.; the extent, if any, to which
20 Q.G. posed an imminent threat to the safety of the defendant or to
21 any other person; the extent, if any, to which Q.G. was physically

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1 resisting arrest or attempting to flee at the time force was used;
2 and the extent of injuries, if any, suffered by Q.G.

3 An officer may not use force solely to punish, retaliate
4 against, or seek retribution against another person. In
5 determining whether the force used was reasonable under all the
6 facts and circumstances, keep in mind that force that is
7 objectively reasonable at the beginning of an encounter may not be
8 justified - even seconds later - if the objective justification
9 for the initial use of force has been eliminated.

10 If, after considering all the circumstances, you find that
11 the defendant used objectively unreasonable force against Q.G.,
12 then you may find that the second element of Count One has been
13 satisfied.

14 **Third Element: Willfulness**

15 The third element of the offense charged in Count One requires
16 the government to prove beyond a reasonable doubt that the
17 defendant acted willfully.

18 A person acts willfully if he acts voluntarily and
19 intentionally with the specific intent to do something the law
20 forbids. The defendant acted intentionally if he used force
21 knowing that the force he used was more than what a reasonable
22 officer would have used under the circumstances. The defendant did

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1 not act intentionally if he did not know that the force he used
2 was more than what a reasonable officer would have used under the
3 circumstances.

4 Willfulness, like other states of mind, may be proved through
5 circumstantial evidence because there is no way of directly
6 scrutinizing the human mind to reveal precisely what someone was
7 thinking at any given moment. You may infer a defendant's state
8 of mind from the surrounding circumstances. In determining whether
9 the defendant acted willfully, you may consider any facts or
10 circumstances you deem relevant to shed light on what was in the
11 defendant's mind. For example, you may consider the manner in which
12 any constitutional violation was carried out, and the duration of
13 any constitutional violation. You may also consider what the
14 defendant said; what the defendant did or failed to do; how the
15 defendant acted; and whether the defendant knew, through training
16 or experience, his actions were unlawful; and whether the defendant
17 knew that his actions violated the policies of the Monongalia
18 County Sheriff's Office or the defendant's training.

19 Also, in considering the defendant's state of mind, it is
20 reasonable to infer that a person ordinarily intends the natural
21 and probable consequences of acts knowingly done or knowingly
22 omitted. The jury may draw the inference that the defendant

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1 intended all of the consequences which one standing in like
2 circumstances and possessing like knowledge should reasonably have
3 expected to result from any act knowingly done or knowingly omitted
4 by the defendant.

5 It is not necessary that the government prove that a defendant
6 was thinking in constitutional or legalistic terms at the time of
7 this incident. The defendant need not be aware of the specific law
8 or provision that his conduct violated. It is sufficient that he
9 commits an act with the intent to do something that the law
10 forbids.

11 It is not a defense that the defendant may also have been
12 motivated by anger, or some other emotion, provided that the intent
13 described was present. You may, however, consider such motivations
14 - as well as any malice displayed by the defendant - in determining
15 whether the defendant acted willfully, as that term has been
16 described to you.

17 If, after considering all the circumstances, you find that
18 the defendant acted willfully, then you may find that the third
19 element of Count One has been satisfied.

20 **Fourth Element: Use of a Dangerous Weapon or Bodily Injury**

21 The fourth element of the offense charged in Count One
22 requires the government to prove beyond a reasonable doubt that

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1 the defendant used a dangerous weapon or that the defendant's
2 conduct resulted in bodily injury to Q.G.

3 Almost any weapon, as used or attempted to be used, may
4 endanger life or inflict bodily harm; as such, in appropriate
5 circumstances, it may be a dangerous and deadly weapon. Thus, an
6 object need not be inherently dangerous to be a dangerous weapon.
7 Rather, innocuous objects or instruments may become capable of
8 inflicting serious injury when put to assaultive use. What
9 constitutes a dangerous weapon depends not on the object's
10 intrinsic character but on its capacity, given the manner of its
11 use, to endanger life or inflict serious physical harm.

12 "Bodily injury" means a cut, abrasion, bruise, burn, physical
13 pain, or any other injury to the body, no matter how temporary.
14 The injury need not be significant, severe, or permanent. The
15 government does not need to prove that the defendant intended to
16 cause bodily injury or that the defendant's acts were the sole
17 cause of bodily injury.

18 Count One of the Indictment charges both that the offense
19 involved the use of a dangerous weapon and that the offense
20 resulted in bodily injury to Q.G. However, the government does not
21 have to prove *both* that a dangerous weapon was used and that the

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1 offense resulted in bodily injury. Proof beyond a reasonable doubt
2 of one of these factors is enough to prove this element.

3 But, in order to return a guilty verdict, all twelve of you
4 must agree that the same factor has been proved. That is, all of
5 you must agree that the government proved beyond a reasonable doubt
6 that the offense involved the use of a dangerous weapon; or all of
7 you must agree that the government proved beyond a reasonable doubt
8 that the offense resulted in bodily injury. If you unanimously
9 agree that the government has proven one or both of these factors
10 beyond a reasonable doubt, then this element has been satisfied.

11
12 **Count Two - Destruction, Alteration, and Falsification of Records**

13 Count Two charges that on or about January 21, 2018 in
14 Monongalia County, within the Northern District of West Virginia,
15 **Lance Kuretza**, in relation to and in contemplation of a matter
16 within the jurisdiction of the Federal Bureau of Investigation, an
17 agency of the United States, knowingly falsified and made a false
18 entry in a record and document with the intent to impede, obstruct,
19 and influence the investigation and proper administration of that
20 matter. Specifically, **Lance Kuretza** falsified and made a false
21 entry in his Use of Force Report for Call Number 18-0002459 for
22 his use of force against Q.G. by: 1) falsely stating that he

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1 sprayed Q.G. with pepper spray before Q.G. was handcuffed, 2)
2 omitting that he sprayed Q.G. with pepper spray after Q.G. was
3 handcuffed, and 3) omitting that he struck Q.G. after Q.G. was
4 handcuffed. All in violation of Title 18, United States Code,
5 Section 1519.

6 **Count Two - Statute Involved**

7 Count Two, which I have just read to you, is brought under
8 Title 18, United States Code, Section 1519. This statute states,
9 in relevant part: "Whoever knowingly alters, destroys, mutilates,
10 conceals, covers up, falsifies, or makes a false entry in any
11 record, document, or tangible object with the intent to impede,
12 obstruct, or influence the investigation or proper administration
13 of any matter within the jurisdiction of any department or agency
14 of the United States . . ., or in relation to or contemplation of
15 any such matter or case," shall be guilty of an offense against
16 the United States.

17 **Count Two - Essential Elements**

18 To find the defendant guilty of **Count Two** of the Indictment,
19 the Government must prove the following elements beyond a
20 reasonable doubt:

21 First: The defendant knowingly falsified a record or
22 document;

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1 Second: The defendant, acting in relation to or in
2 contemplation of the investigation or proper
3 administration of a matter, intended to impede,
4 obstruct, or influence the investigation or proper
5 administration of that matter; and

6 Third: The matter was within the jurisdiction of an agency
7 of the United States; here, the FBI.

8 If you are convinced beyond a reasonable doubt that the
9 government has proved all of these elements, say so by returning
10 a guilty verdict on Count Two. If you have a reasonable doubt about
11 any one of these elements, then you must find the defendant not
12 guilty of Count Two.

13 **First Element: Knowingly Falsified a Document**

14 The first element of the offense charged in Count Two requires
15 the government to prove beyond a reasonable doubt that the
16 defendant knowingly falsified a document or record.

17 A defendant acts "knowingly" if his act is done voluntarily
18 and intentionally, not because of mistake or accident.

19 A defendant falsifies a document or record by including within
20 that document any untrue statement, or by omitting from that
21 document or record any material fact.

22 **Second Element: Intended to Impede, Obstruct, or Influence**

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1 The second element of the offense charged in Count Two
2 requires the government to prove beyond a reasonable doubt that
3 the defendant, acting in relation to or in contemplation of the
4 investigation or proper administration of a matter, intended to
5 impede, obstruct, or influence the investigation or proper
6 administration of that matter.

7 The government does not need to show that a federal
8 investigation was underway or imminent at the time the defendant
9 engaged in obstructive conduct, but only that the acts were taken
10 in relation to or in contemplation of any such matter or
11 investigation. There is also no requirement that the falsification
12 would naturally or probably result in obstruction of the
13 investigation.

14 In determining whether the defendant had the required intent,
15 you may consider all the circumstances of the case, including
16 evidence of, among other things, any statements made or omitted;
17 any acts done or omitted by that person; and any other
18 circumstances you deem relevant and reliable. Also, in considering
19 the defendant's state of mind, it is reasonable to infer that a
20 person ordinarily intends the natural and probable consequences of
21 acts knowingly done or knowingly omitted. The jury may draw the
22 inference that the defendant intended all of the consequences which

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1 one standing in like circumstances and possessing like knowledge
2 should reasonably have expected to result from any act knowingly
3 done or knowingly omitted by the defendant.

4 **Third Element: Within the Jurisdiction of a Federal Agency**

5 The third element of the offense charged in Count Two requires
6 the government to prove beyond a reasonable doubt that the matter
7 was within the jurisdiction of an agency of the United States,
8 here, the Indictment alleges that the matter was in the
9 jurisdiction of the Federal Bureau of Investigation.

10 The government is not required to prove that the defendant
11 knew that the matter was in the jurisdiction of an agency of the
12 United States, or that he knew that a federal investigation was
13 underway or would occur in the future. Nor must the government
14 prove that there was any actual delay or withholding of truthful
15 information from federal authorities. The issue for you to
16 determine is whether the matter the defendant allegedly sought to
17 obstruct was, in fact, within the jurisdiction of a federal agency.

18 **Closing**

19 Finally, ladies and gentlemen, the verdict must represent the
20 considered judgment of each juror. In order to return a verdict,
21 it is necessary that each juror agree with it. Your verdict must
22 be unanimous.

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1 It is your duty, as jurors, to consult with one another and
2 to deliberate with a view toward reaching an agreement, if you can
3 do so without sacrifice of conscientious conviction. Each of you
4 must decide the case for yourselves, but do so only after an
5 impartial consideration of the evidence in the case with your
6 fellow jurors. In the course of your deliberations, do not
7 hesitate to re-examine your own views and change your opinion, if
8 convinced it is erroneous. But do not surrender your honest
9 conviction as to the weight or effect of the evidence, solely
10 because of the opinion of your fellow jurors, or for the mere
11 purpose of returning a verdict.

12 Some of you have taken notes during the course of this trial.
13 Notes are only an aid to memory and should not be given precedence
14 over your independent recollection of the facts. A juror who did
15 not take notes should rely on his or her independent recollection
16 of the proceedings and should not be influenced by the notes of
17 other jurors.

18 If any reference by the Court or by counsel to matters of
19 evidence does not coincide with your own recollection, it is your
20 recollection which should control during your deliberations.

21 Remember at all times, you are not partisans. You are
22 judges – judges of the facts. Your sole interest is to seek the

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1 truth from the evidence in the case.

2 You must not permit yourself to be influenced by sympathy,
3 passion, prejudice, or public sentiment for or against the accused
4 or the Government.

5 If the accused be proved guilty of the crimes alleged in the
6 Indictment beyond reasonable doubt, say so. If not so proved
7 guilty, say so.

8 Under the federal system of criminal procedure, you are not
9 to concern yourself in any way with the sentence that the defendant
10 might receive if you should find him guilty. Your function is solely
11 to decide whether the defendant is guilty or not guilty of the
12 charges against him. If, and only if, you find the defendant
13 guilty, does it then become the duty of the Judge to pronounce the
14 sentence.

15 If it becomes necessary during your deliberations to
16 communicate with the Court, you may send a note by the United
17 States Marshal or Court Security Officer, signed by your
18 foreperson, or by one or more members of the jury. No member of
19 the jury should attempt to communicate with the Judge by any means
20 other than a signed writing. The Court will not communicate with
21 any member of the jury on any subject touching the merits of the
22 case otherwise than in writing, or orally here in open Court.

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1 Also, the Court will not be able to give you transcripts of the
2 evidence or testimony presented at trial. Therefore, you must
3 make your findings upon the evidence as you remember it.

4 Remember, the Judge can only answer questions of law.
5 Therefore, you should initially discuss the instructions of law
6 among yourselves before writing a question on the law. As well,
7 the jury's duty is to judge the facts only on the evidence
8 presented before you. The Judge cannot answer questions of fact
9 or re-open the case for additional evidence.

10 Bear in mind also that you are never to reveal to any person,
11 not even to the Judge, how the jury stands, numerically or
12 otherwise, on the question of the innocence or guilt of the
13 defendant, until after you have reached a unanimous verdict.

14 During your deliberations, you must not communicate with or
15 provide any information to anyone by any means about this case.
16 You may not use any electronic device or media, such as a
17 telephone, cell phone, smart phone, iPhone, iPad, tablet, or
18 computer; the internet, any internet service, or any text or
19 instant messaging service; or any internet chat room, blog, or
20 website such as Facebook, LinkedIn, Snapchat, Instagram, YouTube,
21 Twitter, or TikTok to communicate to anyone any information about
22 this case or to conduct any research about this case until I accept

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1 your verdict.

2 In addition, the local rules of this Court provide that after
3 conclusion of a trial, no party, his agent, or his attorney shall
4 communicate or attempt to communicate with you concerning the
5 jury's deliberations or verdict without first obtaining permission
6 from me. This rule does not prevent you, the jury, from
7 communicating with anyone concerning your deliberations or
8 verdict, but it prevents you from being contacted by others.

9 Upon retiring to the jury room, you should first select one
10 of your members to act as your foreperson, who will preside over
11 your deliberations and who will be your spokesperson here in open
12 Court.

13 Do not begin your deliberations until the clerk delivers to
14 your jury room the verdict form and exhibits.

15 A verdict form has been prepared for you to use. **[Read Verdict**
16 **Form]**. You will take this form to the jury room. When you have
17 reached a unanimous agreement as to your verdict, you will have
18 your foreperson fill in and sign the form that sets forth the
19 verdict upon which you unanimously agree. You will then return
20 with your verdict to the Courtroom.

21 Ladies and gentlemen, the attorneys will now present their
22 closing arguments. Then the case will be ready for your

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1 deliberation, and the Court's officer will conduct you to the jury
2 room.

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