

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA

v.

MATTHEW FARWELL

Defendant

CRIMINAL No. 24-10259-DJC

GOVERNMENT’S PROPOSED JURY INSTRUCTIONS

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PART 1: PRELIMINARY INSTRUCTIONS

DUTY OF THE JURY TO FIND FACTS AND FOLLOW THE LAW

Ladies and gentlemen: 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 instructions. At the end of the trial I will give you more detailed instructions. Those instructions will control your deliberations.

It will be your duty to decide from the evidence what the facts are. You, and you alone, are the judges of the facts. You will hear the evidence, decide what the facts are, and then apply those facts to the law I give to you. That is how you will reach your verdict. In doing so you must follow that law whether you agree with it or not. The evidence will consist of the testimony of witnesses, documents and other things received into evidence as exhibits, and any facts on which the lawyers agree or which I may instruct you to accept.

You should not take anything I may say or do during the trial as indicating what I think of the believability or significance of the evidence or what your verdict should be.¹

¹ FIRST CIRCUIT PATTERN INSTRUCTION NO. 1.01.

NATURE OF INDICTMENT; PRESUMPTION OF INNOCENCE

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 at this trial by an Assistant United States Attorneys Elizabeth Riley, Brian Fogerty, and Torey Cummings. The defendant, Matthew Farwell, is represented by his lawyers, Kim Stevens and Joanne Daley.

The defendant has been charged by the government with violations of federal laws. He is charged with Killing a Witness or Victim and violating a law called Protection of Unborn Children. The charges against Mr. Farwell are contained in the indictment. The indictment is simply the description of the charge against Mr. Farwell; it is not evidence of anything. Mr. Farwell pleaded not guilty to the charges and denies committing the crimes. He is presumed innocent and may not be found guilty by you unless all of you unanimously find that the government has proven his guilt beyond a reasonable doubt.²

² FIRST CIRCUIT PATTERN INSTRUCTION NO. 1.02.

PRELIMINARY STATEMENT OF ELEMENTS OF CRIME

In order to help you follow the evidence, I will now give you a brief summary of the elements of the crimes charged, each of which the government must prove beyond a reasonable doubt to make its case:³

In Count One of the indictment, Mr. Farwell is charged with Killing a Witness or Victim, in violation of Title 18, United States Code, Section 1512(a)(1)(C). To prove that crime, the government must prove beyond a reasonable doubt:

First, on or about February 1, 2021, the defendant killed Sandra Birchmore with malice aforethought, willfully, deliberately, maliciously, and with premeditation; and

Second, that the defendant did so with the intent to prevent a communication about the commission or possible commission of a federal offense, to wit, Deprivation of Rights Under Color of Law, Coercion and Enticement, or Wire Fraud, to a federal law enforcement officer.

The government does not have to prove that Mr. Farwell or Sandra Birchmore had federal law enforcement in mind, but the government must show that there was a reasonable likelihood that a relevant communication, had it actually occurred, would have been made to a federal law enforcement officer.⁴

In Count Two of the indictment, Mr. Farwell is charged with a violation of a federal law called Protection of Unborn Children. To prove that crime, the government must prove beyond a reasonable doubt:

First, the defendant engaged in conduct that violated Title 18, United States Code, Section 1512(a)(1)(C), as alleged in Count One; and

³ FIRST CIRCUIT PATTERN INSTRUCTION NO. 1.04.

⁴ Adapted from *United States v. Casanova*, No. 13-CR-10077-DJC, ECF No. 768 at 135 (D. Mass. 2016), and FIRST CIRCUIT PATTERN INSTRUCTION NO. 4.18.1512(a)(1)(C).

Two, the defendant caused the death of a child in utero at the time such conduct took place.⁵

The government does not have to prove that the defendant had knowledge or should have had knowledge that the alleged victim of the offense, as alleged in Count One, was pregnant. Nor does the government have to prove that the defendant intended to cause the death of the unborn child.⁶

⁵ See 18 U.S.C. §§ 1841(a)(1) and (b)(1).

⁶ See 18 U.S.C. §§ 1841(a)(2)(B)(i) and (a)(2)(B)(ii).

EVIDENCE; OBJECTIONS; RULINGS; BENCH CONFERENCES

I have mentioned the word “evidence.” Evidence includes the testimony of witnesses, documents and other things received as exhibits, and any facts that have been stipulated, that is, formally agreed to by the parties.

There are rules of evidence that control what can be received into evidence. When a lawyer asks a question or offers an exhibit into evidence, and a lawyer on the other side thinks that it is not permitted by the rules of evidence, that lawyer may object. This simply means that the lawyer is requesting that I make a decision on a particular rule of evidence.

Then it may be necessary for me to talk with the lawyers out of the hearing of the jury, either by having a bench conference here while the jury is present in the courtroom, or by calling a recess. Please understand that while you are waiting, we are working. The purpose of these conferences is to decide how certain evidence is to be treated under the rules of evidence, and to avoid confusion and error. We will, of course, do what we can to keep the number and length of these conferences to a minimum.

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

(1) Statements, arguments, questions and comments by lawyers representing the parties in the case are not evidence.

(2) Objections are not evidence. Lawyers have a duty to their client to object when they believe something is improper under the rules of evidence. You should not be influenced by the objection. If I sustain an objection, you must ignore the question or exhibit and must not try to guess what the answer might have been or the exhibit might have contained. If I overrule the objection, the evidence will be admitted, but do not give it special attention because of the objection.

(3) Testimony that I strike from the record, or tell you to disregard, is not evidence and must not be considered.

(4) Anything you see or hear about this case outside the courtroom is not evidence, unless I specifically tell you otherwise during the trial.

Furthermore, a particular item of evidence is sometimes received for a limited purpose only. That is, it can be used by you only for a particular purpose, and not for any other purpose. I will tell you when that occurs and instruct you on the purposes for which the item can and cannot be used.

Finally, some of you may have heard the terms “direct evidence” and “circumstantial evidence.” Direct evidence is testimony by a witness about what that witness personally saw or heard or did. Circumstantial evidence is indirect evidence, that is, it is proof of one or more facts from which one can find or infer another fact. You may 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.⁷

⁷ FIRST CIRCUIT PATTERN INSTRUCTION NO. 1.05.

VERDICT BASED SOLELY ON THE EVIDENCE; IMPROPER CONSIDERATIONS

Your verdict must be based solely upon the evidence. It would be improper for you to base your verdict on anything that is not evidence.

You may not base your verdict on any personal feelings, prejudices, or sympathies you may have about the defendant or about the nature of the crimes with which they are charged.

You may not consider or be influenced by any possible punishment that may be imposed on the defendant.

Again, your verdict must be based solely on the evidence and according to the law.

INFERENCES

Although you may consider only the evidence presented in the case, you are not limited to the plain statements made by witnesses or contained in the documents. In other words, you are not limited solely to what you saw and heard as the witnesses testified.

You are also permitted to draw reasonable inferences from the facts, if you believe those inferences are justified in light of common sense and personal experience. An inference is simply a deduction or conclusion that may be drawn from the facts that have been established. Any inferences you draw must be reasonable, and based on the facts as you find them. Inferences may not be based on speculation or conjecture.⁸

⁸ FIRST CIRCUIT PATTERN INSTRUCTION NO. 3.04 (modified).

CREDIBILITY OF WITNESSES (PRELIMINARY INSTRUCTION)

In deciding what the facts are, you may have to decide what testimony you believe and what testimony you do not believe. You may believe everything a witness says or only part of it or none of it.

In deciding what to believe, you may consider a number of factors, including the following: (1) the witness's ability to see or hear or know the things the witness testifies to; (2) the quality of the witness's memory; (3) the witness's manner while testifying; (4) whether the witness has an interest in the outcome of the case or any motive, bias or prejudice; (5) whether the witness is contradicted by anything the witness said or wrote before trial or by other evidence; and (6) how reasonable the witness's testimony is when considered in the light of other evidence which you believe.⁹

⁹ FIRST CIRCUIT PATTERN INSTRUCTION NO. 1.06.

CONDUCT OF THE JURY

To ensure fairness, you as jurors must obey the following rules:

First, do not talk among yourselves about this case, or about anyone involved with it, until the end of the case when you go to the jury room to decide on your verdict;

Second, do not talk with anyone else about this case, or about anyone who has anything to do with it, until the trial has ended and you have been discharged as jurors. “Anyone else” includes members of your family and your friends. You may tell them that you are a juror, but do not tell them anything about the case until after you have been discharged by me;

Third, do not let anyone talk to you about the case or about anyone who has anything to do with it. If someone should try to talk to you, please report it to me immediately;

Fourth, during the trial do not talk with or speak to any of the parties, lawyers or witnesses involved in this case, you should not even pass the time of day with any of them. It is important not only that you do justice in this case, but that you also give the appearance of doing justice. If a person from one side of the case sees you talking to a person from the other side, even if it is simply to pass the time of day, an unwarranted and unnecessary suspicion about your fairness might be aroused. If any lawyer, party or witness does not speak to you when you pass in the hall, ride the elevator or the like, it is because they are not supposed to talk or visit with you;

Fifth, do not read any news stories or articles about the case or about anyone involved with it, or listen to any radio or television reports about the case or about anyone involved with it;

Sixth, do not do any research, such as consulting dictionaries or other reference materials, and do not make any investigation about the case on your own;

Seventh, if you need to communicate with me simply give a signed note to the court security officer to give to me; and

Eighth, do not make up your mind about what the verdict should be until after you have gone to the jury room to decide the case and you and your fellow jurors have discussed the evidence. Keep an open mind until then.¹⁰

¹⁰ FIRST CIRCUIT PATTERN INSTRUCTION NO. 1.07.

NOTE-TAKING

I am going to permit you to take notes in this case, and the courtroom deputy has distributed pencils and pads for your use. I want to give you a couple of warnings about taking notes, however. First of all, do not allow your note-taking to distract you from listening carefully to the testimony that is being presented. If you would prefer not to take notes at all but simply to listen, please feel free to do so. Please remember also from some of your grade-school experiences that not everything you write down is necessarily what was said. Thus, when you return to the jury room to discuss the case, do not assume simply because something appears in somebody's notes that it necessarily took place in court. Instead, it is your collective memory that must control as you deliberate upon the verdict. Please take your notes to the jury room at every recess. I will have the courtroom deputy collect them at the end of each day and place them in the vault. They will then be returned to you the next morning. When the case is over, your notes will be destroyed. These steps are in line with my earlier instruction to you that it is important that you not discuss the case with anyone or permit anyone to discuss it with you.¹¹

¹¹ FIRST CIRCUIT PATTERN INSTRUCTION NO. 1.08.

PART 2: INSTRUCTIONS CONCERNING CERTAIN EVIDENCE

STIPULATIONS

The evidence in this case includes facts to which the lawyers have agreed or stipulated. A stipulation means simply that the government and the defendant accept the truth of a particular proposition or fact. Since there is no disagreement, there is no need for evidence apart from the stipulation. You must accept the stipulation as fact to be given whatever weight you choose.¹²

¹² FIRST CIRCUIT PATTERN INSTRUCTION NO. 2.01.

CREDIBILITY OF WITNESSES

Whether the government has sustained its burden of proof does not depend upon the number of witnesses it has called or upon the number of exhibits it has offered, but instead upon the nature and quality of the evidence presented. You do not have to accept the testimony of any witness if you find the witness not credible. You must decide which witnesses to believe and which facts are true. To do this, you must look at all the evidence, drawing upon your common sense and personal experience.

You may want to take into consideration such factors as the witnesses' conduct and demeanor while testifying; their apparent fairness or any bias they may have displayed; any interest you may discern that they may have in the outcome of the case; any prejudice they may have shown; their opportunities for seeing and knowing the things about which they have testified; the reasonableness or unreasonableness of the events that they have related to you in their testimony; and any other facts or circumstances disclosed by the evidence that tend to corroborate or contradict their versions of the events.¹³

¹³ FIRST CIRCUIT PATTERN INSTRUCTION NO. 3.06.

PRIOR INCONSISTENT STATEMENTS

The testimony of a witness may be discredited or impeached by showing that he or she previously made statements that are inconsistent with his or her present testimony. If a witness made inconsistent statements about any significant matter, you may choose to distrust the testimony of that witness in other respects. You may reject all of the testimony of that witness or give it such credibility as you may think it deserves.

Sometimes, of course, people make innocent mistakes, particularly as to unimportant details; not every contradiction or inconsistency is necessarily important. Again, you alone are the judges of the witnesses' credibility.

EXPERT TESTIMONY

You have heard testimony from persons described as experts. An expert witness has special knowledge or experience that allows the witness to give an opinion.

You may accept or reject such testimony. In weighing the testimony, you should consider the factors that generally bear upon the credibility of a witness as well as the expert witness's education and experience, the soundness of the reasons given for the opinion and all other evidence in the case.

Remember that you alone decide how much of a witness's testimony to believe, and how much weight it should be given.¹⁴

¹⁴ FIRST CIRCUIT PATTERN INSTRUCTION NO. 2.07.

STATEMENTS BY THE DEFENDANT

You have heard evidence that the defendant made a statement in which the government claims he admitted certain facts.

It is for you to decide (1) whether Mr. Farwell made the statement, and (2) if so, how much weight to give it. In making those decisions, you should consider all of the evidence about the statement, including the circumstances under which the statement may have been made and any facts or circumstances tending to corroborate or contradict the version of events described in the statement.¹⁵

¹⁵ FIRST CIRCUIT PATTERN INSTRUCTION NO. 2.11.

LAW ENFORCEMENT AND GOVERNMENT WITNESSES

You have heard the testimony of law enforcement officers and other witnesses employed by the government. You may accept or reject that testimony. The fact that a witness may be employed as a law enforcement officer or by the government does not mean that his or her testimony is necessarily deserving of more or less consideration or greater or less weight than that of any other witness.

Again, it is for you to decide whether to accept the testimony of any witness, and what weight, if any, to give to that testimony.

EYEWITNESS IDENTIFICATION

Testimony by a witness as to identity must be received with caution and scrutinized with care. The government's burden of proof extends to every element of each crime charged, including the burden of proving beyond a reasonable doubt the identity of an alleged perpetrator of an offense.

You may consider the following in evaluating the accuracy of an eyewitness identification as well as any other questions you believe are important:

First, you should ask whether the witness was able to observe and had an adequate opportunity to observe the person who committed the crime charged. Many factors affect whether a witness has had an adequate opportunity to observe the person committing the crime. Those factors include the length of time during which the witness observed the person, the distance between the witness and the person, the lighting condition, how closely the witness was paying attention to the person, whether the witness was under stress while observing the person, who committed the crime, whether the person's faculties were impaired by the ingestion of alcohol or narcotics, and any other factors you consider important.

Second, you should ask whether the witness is positive in the identification and whether the witness's testimony remained positive and unqualified after cross-examination. If the witness's identification testimony is positive and unqualified, you should ask whether the witness's certainty is well-founded.¹⁶

¹⁶ FIRST CIRCUIT PATTERN INSTRUCTION NO. 2.22, Cmt. 1 (incorporating THIRD CIRCUIT PATTERN INSTRUCTION NO. 4.15).

PART 3: FINAL INSTRUCTIONS

DUTY OF THE JURY TO FIND FACTS AND FOLLOW LAW

It is your duty to find the facts from all the evidence admitted in this case. To those facts you must apply the law as I give it to you. The determination of the law is my duty as the presiding judge in this court. It is your duty to apply the law exactly as I give it to you, whether you agree with it or not. You must not be influenced by any personal likes or dislikes, prejudices or sympathy. That means that you must decide the case solely on the evidence before you and according to the law. You will recall that you took an oath promising to do so at the beginning of the case.

In following my instructions, you must follow all of them and not single out some and ignore others; they are all equally important. You must not read into these instructions, or into anything I may have said or done, any suggestions by me as to what verdict you should return—that is a matter entirely for you to decide.¹⁷

¹⁷ FIRST CIRCUIT PATTERN INSTRUCTION NO. 3.01.

PRESUMPTION OF INNOCENCE; PROOF BEYOND A REASONABLE DOUBT

It is a cardinal principle of our system of justice that every person accused of a crime is presumed to be innocent unless and until his or her guilt is established beyond a reasonable doubt. The presumption is not a mere formality. It is a matter of the most important substance.

The presumption of innocence alone may be sufficient to raise a reasonable doubt and to require the acquittal of a defendant. The defendant before you, Matthew Farwell, has the benefit of that presumption throughout the trial, and you are not to convict him of a particular charge unless you are persuaded of his guilt of that charge beyond a reasonable doubt.

The presumption of innocence until proven guilty means that the burden of proof is always on the government to satisfy you that Mr. Farwell is guilty of the crime with which he is charged beyond a reasonable doubt. The law does not require that the government prove guilt beyond all possible doubt; proof beyond a reasonable doubt is sufficient to convict. This burden never shifts to Mr. Farwell. It is always the government's burden to prove each of the elements of the crimes charged beyond a reasonable doubt by the evidence and the reasonable inferences to be drawn from that evidence. Mr. Farwell has the right to rely upon the failure or inability of the government to establish beyond a reasonable doubt any essential element of a crime charged against him.

If, after fair and impartial consideration of all the evidence, you have a reasonable doubt as to Mr. Farwell's guilt of a particular crime, it is your duty to acquit him of that crime. On the other hand, if, after fair and impartial consideration of all the evidence, you are satisfied beyond a reasonable doubt of Mr. Farwell's guilt of a particular crime, you should vote to convict him.¹⁸

¹⁸ FIRST CIRCUIT PATTERN INSTRUCTION NO. 3.02.

DEFENDANT'S CONSTITUTIONAL RIGHT NOT TO TESTIFY

Like all defendants, the defendant in this case has a constitutional right not to testify. No inference of guilt, or of anything else, may be drawn from the fact that the defendant did not testify. That fact should not enter in any way in your deliberations or your vote. For any of you to do so would be wrong; indeed, it would be a violation of your oath as a juror.¹⁹

¹⁹ FIRST CIRCUIT PATTERN INSTRUCTION NO. 3.03 (modified).

WHAT IS EVIDENCE; INFERENCES (FINAL INSTRUCTINONS)

The evidence from which you are to decide what the facts are consists of sworn testimony of witnesses, both on direct and cross-examination, regardless of who called the witness; the exhibits that have been received into evidence; and any facts to which the lawyers have agreed or stipulated. A stipulation means simply that the government and Mr. Farwell accept the truth of a particular proposition or fact. Since there is no disagreement, there is no need for evidence apart from the stipulation. You must accept the stipulation as fact to be given whatever weight you choose.

Although you may consider only the evidence presented in the case, you are not limited in considering that evidence to the bald statements made by the witnesses or contained in the documents. In other words, you are not limited solely to what you see and hear as the witnesses testify. You are permitted to draw from facts that you find to have been proven such reasonable inferences as you believe are justified in the light of common sense and personal experience.²⁰

²⁰ FIRST CIRCUIT PATTERN INSTRUCTION NO. 3.04.

KINDS OF EVIDENCE: DIRECT AND CIRCUMSTANTIAL

There are two kinds of evidence: direct and circumstantial. Direct evidence is direct proof of a fact, such as testimony of an eyewitness that the witness saw something. Circumstantial evidence is indirect evidence, that is proof of a fact or facts from which you could draw the inference, by reason and common sense, that another fact exists, even though it has not been proven directly. You are entitled to consider both kinds of 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.²¹

²¹ FIRST CIRCUIT PATTERN INSTRUCTION NO. 3.05.

CREDIBILITY OF WITNESSES (FINAL INSTRUCTIONS)

Whether the government has sustained its burden of proof does not depend upon the number of witnesses it has called or upon the number of exhibits it has offered, but instead upon the nature and quality of the evidence presented. You do not have to accept the testimony of any witness if you find the witness not credible. You must decide which witnesses to believe and which facts are true. To do this, you must look at all the evidence, drawing upon your common sense and personal experience.

You may want to take into consideration such factors as the witnesses' conduct and demeanor while testifying; their apparent fairness or any bias they may have displayed; any interest you may discern that they may have in the outcome of the case; any prejudice they may have shown; their opportunities for seeing and knowing the things about which they have testified; the reasonableness or unreasonableness of the events that they have related to you in their testimony; and any other facts or circumstances disclosed by the evidence that tend to corroborate or contradict their versions of the events.²²

²² FIRST CIRCUIT PATTERN INSTRUCTION NO. 3.06.

WHAT IS NOT EVIDENCE (FINAL INSTRUCTIONS)

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

(1) Arguments and statements by lawyers are not evidence. The lawyers are not witnesses.

What they say in their opening statements, closing arguments and at other times is intended to help you interpret the evidence, but it is not evidence. If the facts as you remember them from the evidence differ from the way the lawyers have stated them, your memory of them controls.

(2) Questions and objections by lawyers are not evidence. Lawyers have a duty to their clients to object when they believe a question is improper under the rules of evidence. You should not be influenced by the objection or by my ruling on it.

(3) Anything that I have excluded from evidence or ordered stricken and instructed you to disregard is not evidence. You must not consider such items.

(4) Anything you may have seen or heard when the court was not in session is not evidence. You are to decide the case solely on the evidence received at trial.

(5) The indictment is not evidence. This case, like most criminal cases, began with an indictment. I caution you, as I have before, that the fact that Mr. Farwell has had an indictment filed against him is no evidence whatsoever of his guilt. The indictment is simply an accusation. It is the means by which the allegations and charges of the government are brought before this court. The indictment proves nothing.²³

²³ FIRST CIRCUIT PATTERN INSTRUCTION NO. 3.08 (modified).

CHARTS

Certain charts have been shown to you to help explain the facts disclosed by the evidence in the case. They are not themselves evidence. If they do not correctly reflect the evidence in the case, you should not accept them.

NOTE-TAKING

As I indicated at the beginning of the trial, you have been permitted to take notes, but some cautions apply. You should bear in mind that not everything that is written down is necessarily what was said. When you return to the jury room to discuss the case, do not assume simply because something appears in somebody's notes that it necessarily took place in court. Notes are an aid to recollection, nothing more; the fact that something is written down does not mean that it is necessarily accurate.

EXHIBIT NUMBERS

The numbers assigned to the exhibits are for convenience and in order to ensure an orderly procedure. You should draw no inference from the fact that a particular exhibit was assigned a particular number, or that there may be gaps in the number sequence.

THE CHARGED OFFENSES—INTRODUCTION

I am now going to give you some instructions on the nature of the crimes charged in the indictment and the elements of the crimes that the government must prove beyond a reasonable doubt.

The indictment charges Matthew Farwell with two violations of federal law. Specifically, he is charged in Count One of the indictment with Killing a Witness or Victim, in violation of Title 18, United States Code, Section 1512(a)(1)(C). The defendant is charged in Count Two with Protection of Unborn Children, in violation of Title 18, United States Code, Sections 1841(a)(1), (a)(2)(A), and (a)(2)(C).

Before turning to the elements of each of these offenses, I will first define some terms that I will use during the course of these instructions.

DEFINITION OF KNOWINGLY AND WILLFULLY

You will hear reference throughout these instructions to whether the government has proven beyond a reasonable doubt that the defendant committed certain acts knowingly or willfully. To act “knowingly” means that the act was done voluntarily and intentionally and not because of mistake or accident.²⁴ You may 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.²⁵

To act “willfully” means to act voluntarily and intelligently with a specific intent that the underlying crime be committed—that is to say, with bad purpose, either to disobey or disregard the law, not to act by ignorance, accident or mistake.²⁶

All of these terms concern the defendant’s state of mind. Because it is impossible to prove through direct evidence the inner workings of the human mind, it is frequently necessary to resort to circumstantial evidence. Thus, in deciding whether something is done knowingly or willfully, you may consider the action of the defendant by what he said or did, all of the facts and circumstances surrounding his conduct, and any reasonable inferences to be drawn from the facts and circumstances. It is entirely up to you, however, to decide what facts are proven by the evidence received during this trial.²⁷

The question of whether someone committed an act knowingly or intentionally should never be confused with a motive for an act. Motive is what prompts a person to act or fail to act.

²⁴ FIRST CIRCUIT PATTERN INSTRUCTION NO. 2.15.

²⁵ FIRST CIRCUIT PATTERN INSTRUCTION NO. 4.18.1343.

²⁶ FIRST CIRCUIT PATTERN INSTRUCTION NO. 2.17.

²⁷ See *United States v. Silva*, 742 F.3d 1, 5, 11 (1st Cir. 2014) (approving instruction directing jury to consider circumstantial evidence to determine defendant’s intent).

The concept of motive is different than the concept of knowledge or intent. Intent and knowledge refer only to the state of mind with which the act is done or omitted.

The government is never required to prove motive. For purposes of determining innocence or guilt, therefore, the motive of a defendant is immaterial, except insofar as evidence of motive may aid in the determination of his state of mind or his intent.

COUNT ONE—KILLING A WITNESS OR VICTIM

In Count One, the defendant, Matthew Farwell, is charged with Killing a Witness or Victim. Here, the witness or victim is alleged to be Sandra Birchmore. Federal law prohibits killing a person to prevent a communication to a federal law enforcement officer about the commission or possible commission of a federal offense. The government alleges that the federal offenses about which Sandra Birchmore possessed information are Deprivation of Rights Under Color of Law, in violation of Title 18, United States Code, Section 242, Coercion and Enticement, in violation of Title 18, United States Code, Section 2422(b), and Wire Fraud, in violation of Title 18, United States Code, Section 1343. I will define those underlying offenses later in my instructions, so you understand the type of communication the government alleges the defendant acted to prevent.

As to Count One, the government must prove beyond a reasonable doubt that:

First, on or about February 1, 2021, the defendant killed Sandra Birchmore with malice aforethought, willfully, deliberately, maliciously, and with premeditation; and

Second, that the defendant did so with the intent to prevent a communication about the commission or possible commission of a federal offense, to wit, Deprivation of Rights Under Color of Law, Coercion and Enticement, or Wire Fraud, to a federal law enforcement officer.

The government need not prove that the defendant or Sandra Birchmore had federal law enforcement in mind, but the government must show that there was a reasonable likelihood that a relevant communication, had it actually occurred, would have been made to a federal law enforcement officer.²⁸

²⁸ Adapted from *United States v. Casanova*, No. 13-CR-10077-DJC, ECF No. 768 at 135 (D. Mass. 2016), and FIRST CIRCUIT PATTERN INSTRUCTION NO. 4.18.1512(a)(1)(C).

Moreover, you need not find that preventing a communication about the commission or possible commission of one of the foregoing federal offenses was the defendant's sole intention. It is sufficient if you find beyond a reasonable doubt that that he possessed this intent among others.²⁹

²⁹ See, e.g., *United States v. Technodyne LLC*, 753 F.3d 368, 385 (2d Cir. 2014) ("It is commonplace that the law recognizes that there may be multiple motives for human behavior; thus, a specific intent need not be the actor's sole, or even primary purpose.").

COUNT ONE—HOMICIDE INSTRUCTIONS

I will now give you further instructions about some of the terms I used in the instructions for Count One.

For Count One, the government has the burden of proving that the defendant unlawfully killed Sandra Birchmore. That means the government must prove beyond a reasonable doubt that the defendant’s conduct was the direct cause of Sandra Birchmore’s death. This means simply that the government must prove that the defendant inflicted an injury or injuries upon Sandra Birchmore from which she died.

An act is done unlawfully if it is done without justification or excuse. While the taking of a human life is a most serious matter, not all killings, even when intentional, are unlawful. The law recognizes that a killing, committed in self-defense, may, under certain circumstances, be excused or justified, so it is not considered unlawful. But there are definite standards which determine the application of the law of self-defense. No self-defense claim has been raised in this case.³⁰

A defendant acted with “malice aforethought” if he intended to kill the victim.³¹ Intent refers to the defendant’s objective or purpose. The government must prove beyond a reasonable doubt that Mr. Farwell acted consciously, with the intent to kill Sandra Birchmore.³² The government must prove that Mr. Farwell acted willfully, with a bad or evil purpose to break the law. However, the government need not prove that Mr. Farwell harbored feelings of spite, malevolence, hatred or ill will toward Sandra Birchmore.³³ You are permitted, but not required,

³⁰ 2 Modern Federal Jury Instructions—Criminal, ¶ 41.01 (Matthew Bender).

³¹ See *United States v. Capers*, 20 F.4th 105, 129–30 (2d Cir. 2021) (holding that “malice aforethought” is a phrase used to signify certain mental states sufficient to support liability for murder and concluding that “‘first and foremost’ among those mental states was ‘intent to kill.’”).

³² 2 Modern Federal Jury Instructions—Criminal, ¶ 41.01 (Matthew Bender).

³³ *Id.*

to infer that a defendant who intentionally uses a dangerous weapon on another person intends to kill that person.³⁴

In addition to the definition I have already provided regarding the term “willfully,” the terms “willful, deliberate, malicious and premeditated” mean that the unlawful killing, as defined herein, was done upon planning or deliberation. The government must prove beyond a reasonable doubt that Mr. Farwell killed Sandra Birchmore only after thinking the matter over, deliberating whether to act before committing the crime. There is no requirement that the government prove that the defendant deliberated for any particular period of time in order to show premeditation. The amount of time need for premeditation of a killing depends on the person and the circumstances. It is sufficient if you find that before he acted, Mr. Farwell had a period of time to become fully aware of what he intended to do and to think it over before he acted.³⁵

To determine the existence of premeditation, you may consider: (1) facts about how and what the defendant did prior to the actual killing which show he was engaged in activity directed toward the killing, that is, planning activity; (2) facts about the defendant’s prior relationship and conduct with the alleged victim from which motive may be inferred; and (3) facts about the nature of the killing from which it may be inferred that the manner of killing was so particular and exacting that the defendant must have intentionally killed according to a preconceived design.³⁶

³⁴ See *United States v. Tecumseh*, 630 F.2d 749, 752–53 (10th Cir. 1980) (approving instruction permitting, but not requiring, jury to find malice where the defendant uses a deadly weapon).

³⁵ 2 Modern Federal Jury Instructions—Criminal, ¶ 41.01 (Matthew Bender); see *United States v. Brown*, 518 F.2d 821, 825 n.2 (7th Cir. 1975) (instruction in § 1111 case).

³⁶ *United States v. Blue Thunder*, 604 F.2d 550, 553 (8th Cir. 1979) (citing W. LaFave & A. Scott, Jr., *Criminal Law* § 73 at p. 564 (1972)).

COUNT ONE—UNDERLYING FEDERAL OFFENSES

In order for you to understand the nature of the potential communication that the government alleges the defendant acted to prevent, I will describe the elements of the underlying federal offenses. The government does not have to prove the defendant committed any one of the following underlying offenses in order to prove that the defendant committed the offense alleged in Count One, Killing a Witness or Victim.

Federal law prohibits the Deprivation of Rights Under Color of Law. The elements of this underlying offense are: (1) the defendant acted under color of law; (2) to deprive Sandra Birchmore of a constitutional right, to wit, the right secured by the Fourteenth Amendment to be free from sexual contact while under the age of 16 years old; and (3) that the defendant acted willfully.³⁷

“Under color of law” means under pretense of law and includes acts of police officers as they perform their official duties including when they abuse or misuse their power by going beyond the bounds of lawful authority. Actions can be “under color of law” when an official gains access to a victim in the course of official duty.³⁸

Federal law prohibits Coercion and Enticement. The elements of this underlying offense are: (1) the defendant knowingly persuaded, induced, enticed, or coerced a victim to engaged in sexual activity; (2) the defendant did so by using a facility or means of interstate or foreign commerce; (3) the victim at the time was less than 16 years old; and (4) the sexual activity was a criminal offense.³⁹

³⁷ See *United States v. Cartagena*, 172 F.4th 109, 113 (1st Cir. 2026).

³⁸ See *United States v. Torres-Sobrado*, 733 F. Supp. 2d 325, 327–28 (D.P.R. 2010) (citations omitted); see also *United States v. Walsh*, 194 F.3d 37, 51 (2d Cir. 1999) (“The relevant question . . . is not whether the actual abuse was part of the official’s duties but, rather, whether the abuse was ‘made possible only because the wrongdoer is clothed with the authority of state law.’”) (quoting *United States v. Classic*, 313 U.S. 299, 326 (1941)).

³⁹ FIRST CIRCUIT PATTERN INSTRUCTION NO. 4.18.2422(b).

In the Commonwealth of Massachusetts, it is a criminal offense to engage in sexual intercourse with a child under the age of 16 years of age.⁴⁰

“Interstate commerce” means trade, transactions, transportation or communication between any point in a state and any place outside that state, or between two points within a state through a place outside the state.

“Foreign commerce” means trade, transactions, transportation or communication between any point in the United States and any place outside the United States, or between two points within the United States and a place outside the United States.

The Internet is a facility or means of interstate and foreign commerce.⁴¹

Federal law prohibits Wire Fraud. The elements of this underlying offense are: (1) that there was a scheme to defraud, by means of false or fraudulent pretenses, representations, or promises, in order to obtain money or property; (2) the scheme to defraud involved the misrepresentation or concealment of a material fact or matter, or the scheme to obtain money or property by means of false or fraudulent pretenses involved a false statement, assertion, half-truth, or knowing concealment concerning a material fact or matter; (3) that the defendant knowingly and willfully participated in this scheme with the intent to defraud; and (4) that for the purpose of executing the scheme or in furtherance of the scheme, the defendant caused an interstate or foreign wire communication to be used, or it was reasonably foreseeable that for the purpose of executing the scheme or in furtherance of the scheme, an interstate or foreign wire communication would be used.

⁴⁰ MGL Ch. 265, Sec. 23.

⁴¹ *United States v. Tello*, 600 F.3d 1161, 1165 (9th Cir. 2010) (holding that the internet is an instrumentality of interstate commerce).

A scheme includes any plan, pattern, or course of action. It is not necessary that the government prove that the alleged scheme actually succeeded in defrauding anyone. The term “defraud” means to deceive another in order to obtain money or property.

The term “false or fraudulent pretenses” means any false statements or assertions that were either known to be untrue when made or were made with reckless indifference to their truth and that were made with the intent to defraud. The term includes actual, direct false statements as well as half-truths and the knowing concealment of facts. The false or fraudulent representations at issue must be material.

A “material” fact or matter is one that has a natural tendency to influence or be capable of influencing the decision of the decisionmaker to whom it was addressed.

An “interstate or foreign wire communication” includes a telephone communication from one state to another or between the United States and a foreign country. The term also includes a wire transfer of funds between financial institutions as well an e-mail transmission or other internet communication. The wire communication does not itself have to be essential to the scheme, but it must have been made for the purpose of carrying it out. There is no requirement that the defendant himself was responsible for the wire communication, that the wire communication itself was fraudulent, or that the use of wire communications facilities in interstate commerce was intended as the specific or exclusive means of accomplishing the alleged fraud. However, the defendant must know, or could reasonably have foreseen, that use of a wire communication would follow in the course of the scheme.⁴²

⁴² FIRST CIRCUIT PATTERN INSTRUCTION NO. 4.18.1343.

COUNT ONE—FEDERAL LAW ENFORCEMENT OFFICER

The term “federal law enforcement officer” means an officer or employee of the Federal Government, or a person authorized to act for or on behalf of the Federal Government or serving the Federal Government as an advisor or consultant, who is authorized under law to engage in or supervise the prevention, detection, investigation, or prosecution of an offense.⁴³

⁴³ See 18 U.S.C. § 1515(a)(4) (defining “law enforcement officer” for § 1512).

COUNT TWO—PROTECTION OF UNBORN CHILDREN

In Count Two, the defendant, Matthew Farwell, is charged with violating the statute entitled Protection of Unborn Children. Federal law prohibits engaging in certain conduct that causes the death of a child in utero. As to Count Two, the government must prove beyond a reasonable doubt that:

First, the defendant engaged in conduct that violated Title 18, United States Code, Section 1512(a)(1)(C), as that crime is alleged in Count One; and

Second, the defendant caused the death of a child in utero at the time such conduct took place.⁴⁴

The term “unborn child” means a child in utero. The terms “child in utero” or “child, who is in utero” mean a member of the species homo sapiens, at any stage of development, who is carried in the womb.

The government does not have to prove that the defendant had knowledge or should have had knowledge that the alleged victim of the offense, as alleged in Count One, was pregnant. Nor does the government have to prove that the defendant intended to cause the death of the unborn child.⁴⁵

⁴⁴ See 18 U.S.C. §§ 1841(a)(1) and (b)(1).

⁴⁵ See 18 U.S.C. §§ 1841(a)(2)(B)(i) and (a)(2)(B)(ii).

FOREPERSON’S ROLE; UNANIMITY

I come now to the last part of the instructions, the rules for your deliberations. When you retire, you will discuss the case with the other jurors to reach agreement if you can do so. You shall permit your foreperson to preside over your deliberations, and your foreperson will speak for you here in court. Your verdict must be unanimous—that is, all of you must agree on the verdict.⁴⁶

⁴⁶ FIRST CIRCUIT PATTERN INSTRUCTIONS NO. 6.01.

REACHING AGREEMENT

Each of you must decide the case for yourself, but you should do so only after considering all the evidence, discussing it fully with the other jurors, and listening to the views of the other jurors.

Do not be afraid to change your opinion if you think you are wrong. But do not come to a decision simply because other jurors think it is right.

This case has taken time and effort to prepare and try. There is no reason to think it could be better tried or that another jury is better qualified to decide it. It is important therefore that you reach a verdict if you can do so conscientiously. If it looks at some point as if you may have difficulty in reaching a unanimous verdict, and if the greater number of you are agreed on a verdict, the jurors in both the majority and the minority should reexamine their positions to see whether they have given careful consideration and sufficient weight to the evidence that has favorably impressed the jurors who disagree with them. You should not hesitate to reconsider your views from time to time and to change them if you are persuaded that this is appropriate.

It is important that you attempt to return a verdict, but of course, only if each of you can do so after having made your own conscientious determination. Do not surrender an honest conviction as to the weight and effect of the evidence simply to reach a verdict.⁴⁷

⁴⁷ FIRST CIRCUIT PATTERN INSTRUCTION NO. 6.03.

RETURN OF VERDICT FORM

I want to explain to you now what is called the verdict form. This is simply the written notice of the decision you will reach in this case.

[The court explains the verdict form.]

After you have reached a unanimous agreement on a verdict, your foreperson will fill in the form that has been given to you, sign and date it, and advise the jury officer outside your door that you are ready to return to the courtroom.

After you return to the courtroom, your foreperson will deliver the completed verdict form as directed in open court.⁴⁸

⁴⁸ FIRST CIRCUIT PATTERN INSTRUCTION NO. 6.04.

COMMUNICATION WITH THE COURT

If it becomes necessary during your deliberations to communicate with me, you may send a note through the jury officer signed by your foreperson or by one or more members of the jury. No member of the jury should ever attempt to communicate with me on anything concerning the case except by a signed writing, and I will communicate with any member of the jury on anything concerning the case only in writing, or orally here in open court. If you send out a question, I will consult with the parties as promptly as possible before answering it, which may take some time. You may continue with your deliberations while waiting for the answer to any question. Remember that you are not to tell anyone including me how the jury stands, numerically or otherwise, until after you have reached a unanimous verdict or have been discharged.⁴⁹

⁴⁹ FIRST CIRCUIT PATTERN INSTRUCTION NO. 6.05.

Respectfully submitted,

LEAH B. FOLEY
United States Attorney

By: /s/ Brian A. Fogerty
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Assistant U.S. Attorneys

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) on August 3, 2026.

By: /s/ Brian A. Fogerty
BRIAN A. FOGERTY
Assistant U.S. Attorney