

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA)
)
 v.)
)
DZHOKHAR TSARNAEV)

CRIMINAL NO. 13-10200-GAO

**DEFENDANT’S ASSENTED TO MODIFICATION OF GOVERNMENT
PROPOSED GUILT-PHASE PRELIMINARY INSTRUCTIONS**

Defendant, Dzhokhar Tsarnaev, by and through counsel, respectfully files the following requested modification to the Government proposed guilt-phase preliminary instructions. The Government assents.

(1) Strike the following language from p. 3, third full paragraph under Rules for criminal case: “Since the defendant has the right to remain silent, and may choose whether to testify, you may not legally put any weight on a defendant’s choice not to testify.”

(2) Strike the following language from p. 3, first full paragraph under Indictment: “You will have a copy of the indictment during your deliberations. Right now, I will just summarize the charges.” Replace that language with “The indictment is not evidence.”

(3) Strike the following language from p. 4, just before Conduct of the Jury: “The defendant has pleaded not guilty to all of the charges.” This language should be replaced with “The defendant is presumed innocent of all charges, and the government

bears the burden of proving each and every element of the charges beyond a reasonable doubt.”

(4) The fourth line under Taking notes, p. 6 should read “When you leave the courtroom, your notes should be left on your chair.” (Correcting “you” to “your.”)

(5) Replace the second, third and fourth sentences under Course of the trial, p. 6 with “The parties will now proceed with opening statements.”

A marked up copy of the Government’s proposed draft is attached.

Respectfully submitted,

DZHOKHAR TSARNAEV
by his attorneys

/s/ Judy Clarke

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Certificate of Service

I 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) and paper copies will be sent to those indicated as non-registered participants on March 2, 2015.

/s/ Judy Clarke

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

UNITED STATES OF AMERICA)
)
 v.) **Crim. No.13-10200-GAO**
)
DZHOKHAR A. TSARNAEV,)
 Defendant)

**GOVERNMENT’S PROPOSED
GUILT-PHASE PRELIMINARY INSTRUCTIONS**

The United States, by and through its undersigned attorneys, respectfully requests that the Court give the jury the following preliminary instructions before the guilt phase of the trial.

Preliminary Instruction 1

Members of the Jury:

Now that you have been sworn, I need to explain some basic principles about a criminal trial and your duty as jurors. These are preliminary instructions. At the end of the trial I will give you more detailed instructions.

Duty of jury:

It will be your duty to decide what happened so you can determine whether the defendant is guilty or not guilty of the crimes charged in the indictment. At the end of this phase of the trial, I will explain the law that you must follow to reach your verdict. You must follow the law as I explain it to you even if you do not agree with the law.

What is evidence:

You must decide the case solely on the evidence and the reasonable inferences to be drawn from the evidence presented here in the courtroom. Evidence can come in many forms. It can be testimony about what someone saw or heard or smelled. It can be an exhibit admitted

into evidence. It can be someone's opinion.

Some of you may have heard the terms "direct evidence" and "circumstantial evidence." Generally speaking, direct evidence is evidence that something happened. Circumstantial evidence is evidence of circumstances which, if you find them to be true, may lead you to infer that something happened. An example of direct evidence would be testimony from a witness that it was raining last Sunday. An example of circumstantial evidence would be testimony from a witness that on Sunday he stayed indoors but saw someone go outside with a dry umbrella and return an hour later with a wet umbrella. If you believe the testimony about the umbrella, you might conclude from those circumstances that it was raining outside.

As far as the law is concerned, it makes no difference whether evidence is direct or circumstantial. You may choose to believe or disbelieve either kind and should give every piece of evidence whatever weight you think it deserves.

What is not evidence:

Certain things are not evidence and must not be considered. I will list them for you now:

Statements and arguments of the lawyers. In their opening statements and closing arguments, the lawyers will discuss the case, but their remarks are not evidence.

Questions and objections of the lawyers. The lawyers' questions are not evidence. Only the witnesses' answers are evidence. You should not think that something is true just because a lawyer's question suggests that it is. For instance, if a lawyer asks a witness, "it was raining outside, wasn't it?" – that question is not evidence that it was raining outside unless the witness agrees that it was raining outside.

There are rules of evidence that control what can be received into evidence. When a lawyer asks a question or offers an exhibit and a lawyer on the other side thinks that it is not

permitted by the rules of evidence, that lawyer may object. If I overrule the objection, then the question may be answered or the exhibit received. If I sustain the objection, then the question cannot be answered, and the exhibit cannot be received. Whenever I sustain an objection to a question, you must ignore the question and not try to guess what the answer would have been.

Rules for criminal cases:

As you know, this is a criminal case. There are three basic rules about a criminal case that you must keep in mind.

First, the defendant is presumed innocent unless and until he is proven guilty. The indictment charging the defendant with crimes is only an accusation, nothing more. It is not proof of guilt or anything else. The defendant therefore starts out with a clean slate.

Second, the burden of proof is on the government until the very end of the case. The defendant has no burden to prove his innocence or to present any evidence, or to testify. ~~Since the defendant has the right to remain silent and may choose whether to testify, you may not legally put any weight on a defendant's choice not to testify. It is not evidence.~~

Third, the government must prove the defendant's guilt beyond a reasonable doubt. I will give you further instructions on this point later, but bear in mind that the level of proof required is high.

Indictment

The charges against the defendant are in a document called the Indictment. ~~You will have a copy of the Indictment during your deliberations. Right now, I will just summarize the charges. The indictment is not evidence.~~

The Indictment charges the defendant with participating in three separate conspiracies that began at least in or about February 2013 and ended on or about April 19, 2013. A

conspiracy is an agreement with at least one other person to commit a crime. The indictment alleges that the defendant conspired with his brother, Tamerlan Tsarnaev, to use a weapon of mass destruction; to bomb a place of public use; and to destroy property. The indictment further alleges that these conspiracies resulted in the deaths of Krystle Marie Campbell, Officer Sean Collier, Lingzi Lu, and Martin Richard.

The indictment also charges the defendant with multiple counts of using a weapon of mass destruction, bombing a place of public use, and destroying public property, and it alleges in some of those counts that the crimes resulted in the deaths of Krystle Marie Campbell, Officer Sean Collier, Lingzi Lu, and Martin Richard.

The indictment charges the defendant with multiple counts of possession and use of a firearm during and in relation to a crime of violence, and it alleges in some of those counts that the crimes resulted in the deaths of Krystle Marie Campbell, Officer Sean Collier, Lingzi Lu, and Martin Richard.

Finally, the indictment alleges that the defendant carjacked and robbed an individual who has the initials D.M.

The defendant is presumed innocent of all charges, and the Government bears the burden of proving each and every element of the charges beyond a reasonable doubt. ~~The defendant has pleaded not guilty to all of the charges.~~

Conduct of the jury:

I want to remind you of certain instructions that I have given you before and add some new ones.

Do not talk, either among yourselves or with anyone else, about anything related to the case. You may tell the people with whom you live and your employer that you are a juror and give them information about when you will be required to be in court, but you may not discuss

You must promptly tell me about any incident you know of involving an attempt by any person to improperly influence you or any member of the jury.

Do not visit or view any of the places where the charged crimes were allegedly committed, or any other places involved in the case. Do not use Internet maps or Google Earth or any other program or device to search for a view of any location discussed in the testimony.

Do not read, watch, or listen to any accounts or discussions related to the case in the newspaper, on television, radio, or the Internet, or in any other news media or social media.

Do not consider punishment at this stage of the trial. I have previously informed you that some of the offenses in this case potentially carry the death penalty. You must not consider the possibility of a given punishment in determining the defendant's guilt or innocence. If you find the Defendant guilty of a capital crime, punishment will be for you to decide at a later stage of the trial.

In this age of instant electronic communication and research, I want to emphasize that in addition to not talking face to face with anyone about the case, you must not communicate with anyone about the case by any other means, including by telephone, text messages, email, Internet chat, chat rooms, blogs, or social-networking websites such as Facebook, LinkedIn, Instagram, or Twitter.

You must not provide any information about the case to anyone by any means whatsoever, and that includes posting information about the case, or what you are doing in the case, on any device or Internet site, including blogs, chat rooms, social websites, or any other means.

You also must not use Google or otherwise search for any information about the case, or the law that applies to the case, or the people involved in the case, including the defendant, the

witnesses, the lawyers, or the judge. It is important that you understand why these rules exist and why they are so important: you must evaluate only the evidence as it is presented in this courtroom, and must be free from extraneous influence.

Taking notes:

If you wish, you may take notes to help you remember what witnesses said. If you do take notes, please keep them to yourself until you and your fellow jurors go to the jury room to decide the case. Do not let note-taking distract you so that you do not hear other answers by witnesses. When you leave the courtroom, your notes should be left on your chair. Whether or not you take notes, you should rely on your own memory of what was said. Notes are to assist your memory only. They are not entitled to any greater weight than your memory or impression about the testimony.

Course of the trial:

The trial will now begin. ~~First, the government will make an opening statement, which is simply an outline to help you understand the evidence as it comes in. Next, the defendant's attorney may, but does not have to, make an opening statement. Opening statements are neither evidence nor argument.~~The parties will now proceed with opening statements.

The government will then present its witnesses, and counsel for the defendant may cross-examine them. Following the government's case, the defendant may, if he wishes, present witnesses whom the government may cross-examine. After all the evidence is in, the attorneys will present their closing arguments to summarize and interpret the evidence for you, and I will instruct you on the law. After that, you will go to the jury room to decide your verdict.