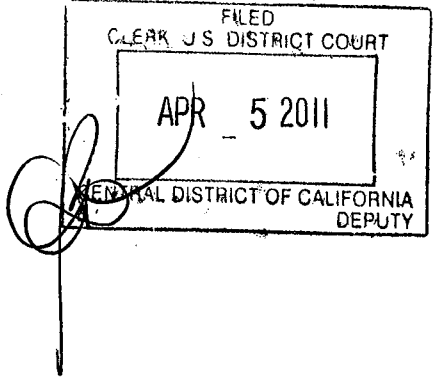


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UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,)	Case No. CR 09-577 (A) -GHK
)	
Plaintiff,)	<u>JURY INSTRUCTIONS</u>
)	
v.)	
)	
EDWARD WYMAN,)	
)	
Defendant.)	
)	
)	
)	

COURT'S INSTRUCTION NO. 1

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3 Members of the jury, now that you have heard all the
4 evidence, it is my duty to instruct you on the law that applies
5 to this case. A copy of these instructions will be available in
6 the jury room for you to consult.

7 It is your duty to weigh and to evaluate all the evidence
8 received in the case and, in that process, to decide the facts.
9 It is also your duty to apply the law as I give it to you to the
10 facts as you find them, whether you agree with the law or not.
11 You must decide the case solely on the evidence and the law and
12 must not be influenced by any personal likes or dislikes,
13 opinions, prejudices, or sympathy. You will recall that you took
14 an oath promising to do so at the beginning of the case.

15 You must follow all these instructions and not single out
16 some and ignore others; they are all important. Please do not
17 read into these instructions or into anything I may have said or
18 done any suggestion as to what verdict you should return - that
19 is a matter entirely up to you.
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COURT'S INSTRUCTION NO. 2

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3 The first superseding indictment is not evidence. The
4 defendant has pleaded not guilty to the charge. The defendant is
5 presumed to be innocent unless and until the government proves
6 the defendant guilty beyond a reasonable doubt. In addition, the
7 defendant does not have to testify or present any evidence to
8 prove innocence. The government has the burden of proving every
9 element of the charge beyond a reasonable doubt.

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COURT'S INSTRUCTION NO. 3

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The defendant has testified. You should treat this testimony just as you would the testimony of any other witness.

COURT'S INSTRUCTION NO. 4

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3 Proof beyond a reasonable doubt is proof that leaves you
4 firmly convinced the defendant is guilty. It is not required
5 that the government prove guilt beyond all possible doubt.

6 A reasonable doubt is a doubt based upon reason and common
7 sense and is not based purely on speculation. It may arise from
8 a careful and impartial consideration of all the evidence, or
9 from lack of evidence.

10 If after a careful and impartial consideration of all the
11 evidence, you are not convinced beyond a reasonable doubt that
12 the defendant is guilty, it is your duty to find the defendant
13 not guilty. On the other hand, if after a careful and impartial
14 consideration of all the evidence, you are convinced beyond a
15 reasonable doubt that the defendant is guilty, it is your duty to
16 find the defendant guilty.

COURT'S INSTRUCTION NO. 5

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The evidence you are to consider in deciding what the facts are consists of:

- (1) the sworn testimony of any witness; and
- (2) the exhibits received in evidence.

COURT'S INSTRUCTION NO. 6

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3 In reaching your verdict you may consider only the testimony
4 and exhibits received in evidence. The following things are not
5 evidence and you may not consider them in deciding what the facts
6 are:

7 1. Questions, statements, objections, and arguments by the
8 lawyers are not evidence. The lawyers are not witnesses.
9 Although you must consider a lawyer's questions to understand the
10 answers of a witness, the lawyer's questions are not evidence.
11 Similarly, what the lawyers have said in their opening
12 statements, will say in their closing arguments and at other
13 times is intended to help you interpret the evidence, but it is
14 not evidence. If the facts as you remember them differ from the
15 way the lawyers state them, your memory of them controls.

16 2. Any testimony that I have excluded, stricken, or
17 instructed you to disregard is not evidence.

18 3. Anything you may have seen or heard when the court was
19 not in session is not evidence. You are to decide the case
20 solely on the evidence received at the trial.

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COURT'S INSTRUCTION NO. 7

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Evidence may be direct or circumstantial. Direct evidence is direct proof of a fact, such as 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 you can find another fact.

You are to consider both direct and circumstantial evidence. Either can be used to prove any fact. The law makes no distinction between the weight to be given to either direct or circumstantial evidence. It is for you to decide how much weight to give to any evidence.

COURT'S INSTRUCTION NO. 8

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3 In deciding the facts in this case, you may have to decide
4 which testimony to believe and which testimony not to believe.
5 You may believe everything a witness says, or part of it, or none
6 of it.

7 In considering the testimony of any witness, you may take
8 into account:

9 (1) the witness's opportunity and ability to see or hear or
10 know the things testified to;

11 (2) the witness's memory;

12 (3) the witness's manner while testifying;

13 (4) the witness's interest in the outcome of the case, if
14 any;

15 (5) the witness's bias or prejudice, if any;

16 (6) whether other evidence contradicted the witness's
17 testimony;

18 (7) the reasonableness of the witness's testimony in light
19 of all the evidence; and

20 (8) any other factors that bear on believability.

21 The weight of the evidence as to a fact does not necessarily
22 depend on the number of witnesses who testify. What is important
23 is how believable the witnesses were, and how much weight you
24 think their testimony deserves.

COURT'S INSTRUCTION NO. 9

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3 You are here only to determine whether the defendant is
4 guilty or not guilty of the charges in the first superseding
5 indictment. The defendant is not on trial for any conduct or
6 offense not charged in the first superseding indictment.

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COURT'S INSTRUCTION NO. 10

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The Tagalog language has been used during this trial.

The evidence you are to consider is only that provided through the official court interpreter. Although some of you may know the Tagalog language, it is important that all jurors consider the same evidence. Therefore, you must accept the evidence presented in the English interpretation and disregard any different meaning.

COURT'S INSTRUCTION NO. 11

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3 You have heard testimony that the defendant made
4 statements. It is for you to decide (1) whether the defendant
5 made the statements, and (2) if so, how much weight to give to
6 them. In making those decisions, you should consider all the
7 evidence about the statements, including the circumstances under
8 which the defendant may have made them.
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COURT'S INSTRUCTION NO. 12

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You have heard testimony from persons who, because of education or experience, were permitted to state opinions and the reasons for their opinions.

Such opinion testimony should be judged like any other testimony. You may accept it or reject it, and give it as much weight as you think it deserves, considering the witness's education and experience, the reasons given for the opinion, and all the other evidence in the case.

COURT'S INSTRUCTION NO. 13

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Certain charts and summaries have been admitted in evidence. Charts and summaries are only as good as the underlying supporting material. You should, therefore, give them only such weight as you think the underlying material deserves.

COURT'S INSTRUCTION NO. 14

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The first superseding indictment charges that the alleged offense was committed "on or about" a certain date.

Although it is necessary for the government to prove beyond a reasonable doubt that the offense was committed on a date reasonably near the date alleged in the charge, it is not necessary for the government to prove that the offense was committed precisely on the date charged.

COURT'S INSTRUCTION NO. 15

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The first superseding indictment charges the defendant with committing the charged offense in several ways, using the conjunctive word "and." However, it is sufficient if the government proves that the defendant committed the offense in only one of the several ways.

COURT'S INSTRUCTION NO. 16

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3 The first superseding indictment charges that on or about
4 May 31, 2009, the defendant knowingly stored a hazardous waste
5 without a permit in violation of the Resource Conservation and
6 Recovery Act ("RCRA"), Title 42, United States Code, Section
7 6928(d)(2)(A).

8 In order to find the defendant guilty of the crime of
9 knowingly storing hazardous waste without a permit, you must find
10 that the government has proven the following elements beyond a
11 reasonable doubt:

- 12 1. That on or about May 31, 2009, the defendant knowingly
13 stored a waste material;
- 14 2. That the waste material that was stored was a hazardous
15 waste;
- 16 3. That the storage was done without a permit; and
- 17 4. That the defendant knew the waste material had the
18 substantial potential to be harmful to others or to the
19 environment; in other words, that it was not a harmless substance
20 like uncontaminated water.

COURT'S INSTRUCTION NO. 17

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An act is done "knowingly" if the defendant is aware of the act and does not act through ignorance, mistake, or accident. The government is not required to prove that the defendant knew that his acts or omissions were unlawful. In other words, the government is not required to prove that the defendant knew that the material he stored was identified as a hazardous waste pursuant to the Resource Conservation and Recovery Act ("RCRA"), or that he knew that he was required to obtain a permit before storing the waste. You may consider evidence of the defendant's words, acts, or omissions, along with all the other evidence, in deciding whether the defendant acted knowingly.

COURT'S INSTRUCTION NO. 18

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

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

COURT'S INSTRUCTION NO. 19

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3 The term "hazardous waste" means any solid waste, or
4 combination of solid wastes, that is either (1) listed in the
5 applicable regulations as a hazardous waste, or (2) although not
6 specifically listed in the regulations as a hazardous waste, is
7 still considered a hazardous waste because it is "reactive" or
8 "toxic," as those terms are defined below.

9 A solid waste that contains spent halogenated solvent waste
10 mixtures or blends containing ten percent or more of 1,1,1-
11 trichloroethane or tetrachloroethylene is listed as a "toxic"
12 hazardous waste.

13 A solid waste is considered to be a "toxic" hazardous waste
14 if an extract of a representative sample of the waste contains
15 concentrations of lead over five milligrams per liter or five
16 parts per million, when tested using the Toxicity Characteristic
17 Leaching Procedure.

18 A solid waste is considered to be a "reactive" hazardous
19 waste if it is capable of detonating or exploding if subjected to
20 a strong initiating source or if heated under confinement.

COURT'S INSTRUCTION NO. 20

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3 The term "solid waste" under RCRA means any garbage, refuse,
4 or other discarded material, including solids, liquids, or
5 semi-solids, resulting from industrial, commercial, mining, or
6 agricultural operations.

7 The term "discarded material" means any material that is
8 abandoned.

9 A material is a "solid waste" if it is abandoned by being:

10 (1) disposed of;

11 (2) burned or incinerated; or

12 (3) accumulated or stored either

13 (a) before being abandoned by being disposed of,
14 burned, or incinerated, or

15 (b) in lieu of being abandoned by being disposed of,
16 burned, or incinerated.

COURT'S INSTRUCTION NO. 21

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The term "storage," when used in connection with hazardous waste, means the containment of hazardous waste, either on a temporary basis or for a period of years, in such a manner as not to constitute disposal of such hazardous waste.

COURT'S INSTRUCTION NO. 22

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In order to store a hazardous waste lawfully, the defendant must have applied for and received a permit from the California Department of Toxic Substances Control ("DTSC") allowing such storage.

COURT'S INSTRUCTION NO. 23

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The government is not required to prove that the storage of the hazardous wastes caused any damage or harm to the environment in order to prove that the defendant committed the charged offense.

COURT'S INSTRUCTION NO. 24

If you find that the government has proven, beyond a reasonable doubt, that the defendant knowingly stored hazardous waste without a permit as charged in the first superseding indictment, you must then decide whether the government has proven that the defendant knew that his conduct placed another person in imminent danger of death or serious bodily injury.

A person's state of mind is knowing with respect to:

1. His conduct, if he is aware of the nature of his conduct;
2. An existing circumstance, if he is aware or believes that the circumstance exists; or
3. A result of his conduct, if he is aware or believes that his conduct is substantially certain to cause danger of death or serious bodily injury.

In determining whether the defendant knew that his conduct placed another person in imminent danger of death or serious bodily injury:

1. The person is responsible only for actual awareness or actual belief that he possessed; and
2. Knowledge possessed by a person other than the defendant but not by the defendant himself may not be attributed to the defendant.

However, in proving the defendant's possession of actual knowledge, circumstantial evidence may be used, including

1 evidence that the defendant took affirmative steps to shield
2 himself from relevant information.

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COURT'S INSTRUCTION NO. 25

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The term "imminent danger" means the existence of a condition or combination of conditions which could reasonably be expected to cause death or serious bodily injury unless the condition is remedied.

COURT'S INSTRUCTION NO. 26

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For the purposes of knowing endangerment, the term "serious bodily injury" means bodily injury which involves: (1) unconsciousness; (2) extreme physical pain; (3) protracted and obvious disfigurement; (4) protracted loss or impairment of the function of a bodily member, organ, or mental faculty; or (5) any bodily injury involving a substantial risk of death.

COURT'S INSTRUCTION NO. 27

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For the purpose of knowing endangerment, it is not necessary for the government to prove that death or serious bodily injury actually occurred.

COURT'S INSTRUCTION NO. 28

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3 When you begin your deliberations, elect one member of the
4 jury as your foreperson who will preside over the deliberations
5 and speak for you here in court.

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

9 Each of you must decide the case for yourself, but you
10 should do so only after you have considered all the evidence,
11 discussed it fully with the other jurors, and listened to the
12 views of your fellow jurors.

13 Do not be afraid to change your opinion if the discussion
14 persuades you that you should. But do not come to a decision
15 simply because other jurors think it is right.

16 It is important that you attempt to reach a unanimous
17 verdict but, of course, only if each of you can do so after
18 having made your own conscientious decision. Do not change an
19 honest belief about the weight and effect of the evidence simply
20 to reach a verdict.

COURT'S INSTRUCTION NO. 29

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3 Because you must base your verdict only on the evidence
4 received in the case and on these instructions, I remind you that
5 you must not be exposed to any other information about the case
6 or to the issues it involves. Except for discussing the case
7 with your fellow jurors during your deliberations:

8 Do not communicate with anyone in any way and do
9 not let anyone else communicate with you in any way
10 about the merits of the case or anything to do with it.
11 This includes discussing the case in person, in
12 writing, by phone or electronic means, via email, text
13 messaging, or any Internet chat room, blog, website or
14 other feature. This applies to communicating with your
15 family members, your employer, the media or press, and
16 the people involved in the trial. If you are asked or
17 approached in any way about your jury service or
18 anything about this case, you must respond that you
19 have been ordered not to discuss the matter and to
20 report the contact to the court.

21 Do not read, watch, or listen to any news or media
22 accounts or commentary about the case or anything to do
23 with it; do not do any research, such as consulting
24 dictionaries, searching the Internet or using other
25 reference materials; and do not make any investigation
26 or in any other way try to learn about the case on your
27 own.

1 The law requires these restrictions to ensure the parties
2 have a fair trial based on the same evidence that each party has
3 had an opportunity to address. A juror who violates these
4 restrictions jeopardizes the fairness of these proceedings, and a
5 mistrial could result that would require the entire trial process
6 to start over. If any juror is exposed to any outside
7 information, please notify the court immediately.

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COURT'S INSTRUCTION NO. 30

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The punishment provided by law for this crime is for the court to decide. You may not consider punishment in deciding whether the government has proved its case against the defendant beyond a reasonable doubt.

COURT'S INSTRUCTION NO. 31

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A verdict form has been prepared for you. After you have reached unanimous agreement on a verdict, your foreperson should complete the verdict form according to your deliberations, sign and date it, and advise the clerk that you are ready to return to the courtroom.

COURT'S INSTRUCTION NO. 32

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3 If it becomes necessary during your deliberations to
4 communicate with me, you may send a note through the bailiff,
5 signed by any one or more of you. No member of the jury should
6 ever attempt to communicate with me except by a signed writing,
7 and I will respond to the jury concerning the case only in
8 writing or here in open court. If you send out a question, I
9 will consult with the lawyers before answering it, which may take
10 some time. You may continue your deliberations while waiting for
11 the answer to any question. Remember that you are not to tell
12 anyone—including me—how the jury stands, numerically or
13 otherwise, on any question submitted to you, including the
14 question of the guilt of the defendant, until after you have
15 reached a unanimous verdict or have been discharged.