

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION

UNITED STATES OF AMERICA)	CRIM. NO. 08-50079-01
Plaintiff,)	
)	
vs.)	DEFENDANT GRAHAM'S
)	SECOND SET OF PROPOSED
JOHN GRAHAM, a/k/a)	JURY INSTRUCTIONS
JOHN BOY PATTON,)	
VINE RICHARD MARSHALL, a/k/a))	
RICHARD VINE MARSHALL, a/k/a))	
DICK MARSHALL,)	
Defendants.)	

Attorney for Plaintiff: Marty J. Jackley, United States Attorney
Robert A. Mandel, Assistant United States Attorney
515 9th Street, 2nd Floor
Rapid City, SD 57701
605-342-7822

Attorney for Defendant: John R. Murphy
328 E. New York Street
Suite 1
Rapid City, SD 57701
605-342-2909

Defendant John Graham files his proposed jury instructions numbered 3 through 6.

Dated March 26, 2009.

/s/ John R. Murphy
John R. Murphy
328 East New York Street, Suite 1
Rapid City, SD 57701
(605) 342-2909

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he served a true and correct copy of the foregoing document upon the person(s) herein next designated, on the date shown below by placing the same in the service indicated, addressed as follows:

MARTY J. JACKLEY

- U.S. Mail, postage prepaid
- Hand Delivery
- Federal Express
- Facsimile at
- Electronic Case Filing

ROBERT A. MANDEL

- U.S. Mail, postage prepaid
- Hand Delivery
- Federal Express
- Facsimile at
- Electronic Case Filing

DANA HANNA

- U.S. Mail, postage prepaid
- Hand Delivery
- Federal Express
- Facsimile at
- Electronic Case Filing

Dated March 26, 2009.

/s/ John R. Murphy
John R. Murphy

Defendant's Proposed Jury Instruction No. 3

Character Witnesses

The defendant has presented the testimony of witnesses who stated that the defendant has the character of a peaceful and honest man. If you believe this evidence, you may use it along with all the other evidence in deciding whether the government has persuaded you beyond a reasonable doubt that the defendant is guilty.

Do not be surprised that a person may tell you his opinion of the defendant, but does not tell you about specific acts that he or she may know of where the defendant exhibited those traits. The law does not allow testimony about specific acts of peacefulness or honesty.

The law occasionally allows character witnesses to be asked whether they know specific things about the defendant. Those questions were asked only to help you decide if the witness really knew the defendant's character for peacefulness and honesty. The information developed by the prosecutor on that subject may not be used by you for any other purpose. Remember, what is stated in a question is not evidence and should not be assumed to be true. That the defendant may have committed an act on a different occasion is not evidence that he committed the crime charged in this case.

Source:

Eighth Circuit Model Instruction 2.10 (modified and merged with Potuto,
Saltzburg & Perlman, Federal Criminal Jury Instruction, Second Ed., § 3.37)

Defendant's Proposed Instruction No. 4

Mention of Previous Trial

During this trial there have been references to a prior trial involving a person named Arlo Looking Cloud. That trial has no bearing on this case. You must decide whether the defendant is guilty or not guilty on the basis of the evidence presented to you here and disregard what you may have heard about the other case.

Source:

Potuto, Saltzburg & Perlman, Federal Criminal Jury Instruction, Second Ed., § 3.36 (modified)

Defendant's Proposed Jury Instruction No. 5

Testimony of Immunized Witness

You have heard evidence that _____ has (made a plea agreement, received a promise from the government, received immunity, will obtain a benefit from the government such as _____). His/her testimony was received in evidence and may be considered by you. You may give his/her testimony such weight as you think it deserves. Whether or not his/her testimony may have been influenced by the (agreement, benefit, promise) is for you to determine.

The witness's guilty plea cannot be considered by you as any evidence of this defendant's guilt. The witness's guilty plea can be considered by you only for the purpose of determining how much, if at all, to rely upon the witness's testimony.

Source: Eighth Circuit Pattern Instruction 4.04 (modified and abbreviated)

Defendant's Proposed Instruction No. 6

Testimony of Accomplice

You have heard testimony from Arlo Looking Cloud who stated that he participated in the crime charged against the defendant. His testimony was received in evidence and may be considered by you. You may give his testimony such weight as you think it deserves. Whether or not his testimony may have been influenced by his desire to please the government or to strike a good bargain with the government about his own situation is for you to determine.

Source: Eighth Circuit Pattern Instruction 4.05