

UNITED STATES DISTRICT COURT  
FOR THE  
DISTRICT OF VERMONT

UNITED STATES OF AMERICA :  
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 :  
 v. : Case No. 2:19-cr-29-1  
 :  
 EVERETT A. SIMPSON, :  
 :  
 Defendant. :  
 :

**JURY CHARGE**

Members of the Jury:

Now that you have heard the evidence and the arguments, it is my duty to instruct you on the law. It is your duty to accept these instructions of law and apply them to the facts as you determine them.

This case is a criminal prosecution brought by the United States against the defendant, Everett A. Simpson. The Indictment charges the defendant with four counts. You will receive a copy of the Indictment to take with you into the jury room.

Count One of the Indictment alleges that:

On or about January 5, 2019, in the District of Vermont and elsewhere, defendant EVERETT A. SIMPSON unlawfully and willfully seized, confined, kidnapped, abducted, and carried away the victim, C.R.; willfully transported C.R. in interstate commerce from New Hampshire to Vermont; and held C.R. for ransom or reward or otherwise for his benefit. (18 U.S.C. § 1201(a)(1)).

Count Two of the Indictment alleges that:

On or about January 5, 2019, in the District of Vermont and elsewhere, defendant EVERETT A. SIMPSON unlawfully and willfully seized, confined, kidnapped, abducted, and carried away the victim, J.R., a minor who had not attained the age of eighteen years and who was neither related to nor in the legal custody of the defendant; willfully transported J.R. in interstate commerce from New Hampshire to Vermont; and held J.R. for ransom or reward or otherwise for his benefit. (18 U.S.C. § 1201(a)(1), 1201(g)).

Count Three of the Indictment alleges that:

On or about January 5, 2019, in the District of Vermont and elsewhere, defendant EVERETT A. SIMPSON knowingly and unlawfully transported in interstate commerce a motor vehicle—a silver 2014 Kia Forte sedan bearing New Hampshire license plate ending in 479—from the State of Vermont to the Commonwealth of Pennsylvania, knowing the vehicle to be stolen. (18 U.S.C. § 2312).

Count Four of the Indictment alleges that:

On or about January 5, 2019, in the District of Vermont and elsewhere, defendant EVERETT A. SIMPSON knowingly and unlawfully transported in interstate commerce a motor vehicle—a white 2017 GMC Savana van bearing New Hampshire license plate 419 5351—from the State of Vermont to the State of New Hampshire, knowing the vehicle to be stolen. (18 U.S.C. § 2312).

**I. GUIDELINES UNDER WHICH THE JURY SHOULD ASSESS THE EVIDENCE**

**ROLE OF THE COURT AND THE JURY**

You have listened carefully to the testimony presented to you. Now you must pass upon and decide the factual issues of this case. You are the sole and exclusive judges of the facts. You pass upon the weight of the evidence, you determine the

credibility of the witnesses, you resolve such conflicts as there may be in the evidence, and you draw such inferences as may be warranted by the facts as you find them.

You must refrain from singling out one instruction alone as stating the law but must consider the instructions as a whole. You are not to be concerned with the wisdom of any rule of law stated by the Court. Regardless of any opinion you may have as to what the law ought to be, it would be a violation of your sworn duty as jurors to base a verdict upon anything but the evidence in the case.

Nothing I say in court or in these instructions is to be taken as an indication that I have any opinion about the facts of the case. It is not my function to determine the facts. That is your function.

**JURORS' PASSIONS, SYMPATHY, AND PREJUDICE**

You are to discharge your duty as jurors in an attitude of complete fairness and impartiality. You should appraise the evidence deliberatively and without the slightest trace of sympathy, bias, or prejudice for or against either party. You are expected to carefully consider all the evidence, follow the law as it now will be given to you and reach a verdict based on your assessment of that evidence, regardless of the consequences.

**ROLE OF INDICTMENT**

At this time, I would like to remind you of the function of a grand jury indictment. An indictment is merely a formal way to accuse the defendant of a crime preliminary to trial. An indictment is not evidence. The Indictment does not create any presumption of guilt or permit an inference of guilt. It should not influence your verdict in any way other than to inform you of the nature of the charges against the defendant.

The defendant has pleaded not guilty to the counts in the Indictment. You have been chosen and sworn as jurors in this case to determine the issues of fact that have been raised by the allegations of the Indictment and the denial made by the not guilty plea of the defendant. You are to perform this duty without bias or prejudice against the defendant or the prosecution.

**"ON OR ABOUT" EXPLAINED**

The Indictment charges that the offenses were committed "on or about" a certain date. Although it is necessary for the government to prove beyond a reasonable doubt that the offenses were committed on dates reasonably near the date alleged in the Indictment, it is not necessary for the government to prove that the offense was committed precisely on the date charged.

**REASONABLE DOUBT AND PRESUMPTION OF INNOCENCE**

The government must prove the defendant guilty beyond a reasonable doubt. The question naturally is what is a reasonable doubt? The words almost define themselves. It is a doubt based upon reason and common sense. It is a doubt that a reasonable person has after carefully weighing all of the evidence. It is a doubt that would cause a reasonable person to hesitate to act in a matter of importance in his or her personal life. Proof beyond a reasonable doubt must, therefore, be proof of such a convincing character that a reasonable person would not hesitate to rely and act upon it in the most important of his or her own affairs. A reasonable doubt is not an excuse to avoid the performance of an unpleasant duty. And it is not sympathy.

In a criminal case, the burden is at all times upon the government to prove guilt 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 the defendant, which means that it is always the government's burden to prove each of the elements of the crimes charged beyond a reasonable doubt. The law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence. A defendant is not even obligated to produce any evidence by cross-examining the witnesses for the government.

If, after fair and impartial consideration of all of the evidence you have a reasonable doubt, it is your duty to find the defendant not guilty. You may have a reasonable doubt simply because of the lack of evidence. On the other hand, if after fair and impartial consideration of all the evidence you are satisfied of the defendant's guilt beyond a reasonable doubt, you should vote to convict.

The law presumes that the defendant is innocent of the charges against him. The presumption of innocence lasts throughout the trial and ends only if you, the jury, find beyond a reasonable doubt that the defendant is guilty. Should the government fail to prove the guilt of the defendant beyond a reasonable doubt, you must find the defendant not guilty.

#### **MULTIPLE CHARGES**

The defendant has been charged with several crimes. The number of crimes is not evidence of guilt, and this should not influence your decision in any way. It is your duty to separately consider the evidence that relates to each charge, and to return a separate verdict for each one. For each charge, you must decide whether the government has presented proof beyond a reasonable doubt that the defendant is guilty of that particular charge.

Your decision on one charge, whether it is guilty or not guilty, should not influence your decision on any of the other charges.

### **EVIDENCE**

You have seen and heard the evidence produced in this trial and it is the sole province of the jury to determine the facts of this case. The evidence consists of the sworn testimony of the witnesses, any exhibits that have been received in evidence, and all the facts which may have been admitted or stipulated. I would now like to call to your attention certain guidelines by which you are to evaluate the evidence.

There are two types of evidence which you may properly use in reaching your verdict. One type of evidence is direct evidence. Direct evidence is when a witness testifies about something she or he knows by virtue of her or his own senses—something she or he has seen, felt, touched, or heard. Direct evidence may also be in the form of an exhibit where the fact to be proved is its present existence or condition.

Circumstantial evidence is evidence which tends to prove a disputed fact by proof of other facts. You infer on the basis of reason and experience and common sense from one established fact the existence or non-existence of some other fact. Circumstantial evidence is of no less value than direct evidence. You should weigh all the evidence in the case. After

weighing all the evidence, if you are not convinced of the guilt of the defendant beyond a reasonable doubt as to any of the elements of any of the offenses charged against him in the Indictment, you must find him not guilty of that offense.

**STIPULATIONS OF FACT**

The parties have stipulated to certain facts. You should consider these facts as established for purposes of the trial. Because the parties have stipulated or agreed to these facts, it is not necessary for the prosecution to introduce evidence to prove these facts.

**TESTIMONY AND ARGUMENTS EXCLUDED**

I caution you that you should entirely disregard any testimony that has been excluded or stricken from the record. Likewise, the arguments of the attorneys and the pro se defendant, and the questions asked by the attorneys and the pro se defendant are not evidence in the case. The evidence that you will consider in reaching your verdict consists, as I have said, only of the sworn testimony of witnesses, the stipulations made by the parties, and all the exhibits that have been received in evidence.

When the attorneys on both sides stipulate or agree as to the existence of a fact, you must accept the stipulation as evidence and regard that fact as proved.

Anything you have seen or heard outside the courtroom is



not evidence, and must be entirely disregarded. You are to consider only the evidence in the case. But in your consideration of the evidence, you are not limited merely to the bald statements of the witnesses. 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 which you find have been proved, such reasonable inferences as you feel are justified in light of your experiences.

#### **QUESTIONS ARE NOT EVIDENCE**

Let me emphasize that a party's questions are not evidence. At times, the person asking questions during cross-examination may have incorporated into a question a statement which assumed certain facts to be true and asked the witness if the statement was true. If the witness denies the truth of a statement, and if there is no evidence in the record proving that the assumed fact is true, then you may not consider the fact to be true simply because it was contained in the party's question.

In short, questions are not evidence; answers are.

#### **CREDIBILITY OF WITNESSES**

You, as jurors, are the sole judges of the credibility of the witnesses and the weight of their testimony. You do not have to accept all the evidence presented in this case as true or accurate. Instead, it is your job to determine the credibility or believability of each witness. You do not have to give the

same weight to the testimony of each witness, because you may accept or reject the testimony of any witness, in whole or in part. In weighing the testimony of the witnesses you have heard, you should consider their interest, if any, in the outcome of the case; their manner of testifying; their candor; their bias, if any; their resentment or anger toward the defendant, if any; the extent to which other evidence in the case supports or contradicts their testimony; and the reasonableness of their testimony. You may believe as much or as little of the testimony of each witness as you think proper.

The weight of the evidence is not determined by the number of witnesses testifying. You may find the testimony of a small number of witnesses or a single witness about a fact more credible than the different testimony of a larger number of witnesses. The fact that one party called more witnesses and introduced more evidence than the other does not mean that you should necessarily find the facts in favor of the side offering the most witnesses. Inconsistencies or discrepancies in the testimony of a witness, or between the testimony of different witnesses, may or may not cause you to discredit such testimony. Two or more persons may well hear or see things differently, or may have a different point of view regarding various occurrences. Innocent misrecollection or failure of recollection is not an uncommon experience. It is for you to weigh the effect

of any discrepancies in testimony, considering whether they pertain to matters of importance, or unimportant details, and whether a discrepancy results from innocent error or intentional falsehood. You should attempt to resolve inconsistencies if you can, but you also are free to believe or disbelieve any part of the testimony of any witness as you see fit.

In this case you have heard testimony from a number of witnesses. I am now going to give you some guidelines for your determinations regarding the testimony of the various types of witnesses presented in this case.

#### **LAW ENFORCEMENT WITNESSES**

You have heard the testimony of law enforcement officials in this case. The fact that a witness may be employed by the federal, state, or local government as a law enforcement official does not mean that his or her testimony is necessarily deserving of more or less consideration or greater or lesser weight than that of an ordinary witness.

It is your decision, after reviewing all the evidence, whether to accept the testimony of the law enforcement witness and to give to that testimony whatever weight, if any, you find it deserves.

#### **JURORS' EXPERIENCE OR SPECIALIZED KNOWLEDGE**

Anything you have seen or heard outside the courtroom is not evidence and must be disregarded entirely. It would be a

violation of your oath as jurors to consider anything outside the courtroom in your deliberations. But in your consideration of the evidence, you do not leave behind your common sense and life experiences. 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 which you find have been proved, such reasonable inferences as you feel are justified in light of the evidence. However, if any juror has specialized knowledge, expertise, or information with regard to the facts and circumstances of this case, he or she may not rely upon it in deliberations or communicate it to other jurors.

**BIAS, PREJUDICE, AND EQUALITY BEFORE THE COURT**

You are to perform the duty of finding the facts without bias or prejudice toward any party. You are to perform this duty in an attitude of complete fairness and impartiality. You must not allow any of your personal feelings about the nature of the crimes charged to interfere with your deliberations, or influence the weight given to any of the evidence.

The question of possible punishment of the defendant in the event of a conviction is not the jury's concern and should not influence your deliberations. Your function is to weigh the evidence in the case and to determine whether the defendant is guilty beyond a reasonable doubt, solely upon the basis of such evidence. If the defendant is convicted, the court will consider

the issue of punishment in a separate phase of the case.

**DEFENDANT TESTIFYING**

The defendant in a criminal case never has any duty to testify or come forward with any evidence. This is because, as I've told you, the burden of proof beyond a reasonable doubt remains on the government at all times, and Mr. Simpson is presumed innocent.

In this case, Mr. Simpson chose to testify and was subject to cross-examination like any other witness. You should judge the testimony of Defendant Everett A. Simpson in the same manner as you judge the testimony of any other witness in this case.

**RACE, RELIGION, NATIONAL ORIGIN, SEX, OR AGE**

You may not consider the race, religion, national origin, sex, or age of the defendant or any of the witnesses in your deliberations over the verdict or in the weight given to any evidence.

**PRO SE DEFENDANT**

Everett A. Simpson has decided to represent himself in this trial and not to use the services of a lawyer. He has a constitutional right to do that. His decision has no bearing on whether he is guilty or not guilty, and it must not affect your consideration of the cause.

Because Mr. Simpson has decided to act as his own lawyer, you have heard him speak at various times during the trial. He

has made an opening statement and a closing argument. He has asked questions of witnesses, made objections, and argued to the Court. I want to remind you that when Mr. Simpson has spoken during these parts of the trial he is acting as a lawyer in the case, and his words are not evidence. The only evidence in this case comes from witnesses who testify under oath on the witness stand and from exhibits that are admitted.

Although the defendant has chosen to represent himself, the court has appointed Steven L. Barth to assist Mr. Simpson as standby counsel. This is a standard procedure.

**GOVERNMENT AS A PARTY**

You are to perform the duty of finding the facts without bias or prejudice toward any party. You are to perform this duty in an attitude of complete fairness and impartiality.

This case is important to the government, for the enforcement of criminal laws is a matter of prime concern to the community. Equally, this case is important to the defendant, who is charged with a serious crime.

The fact that the prosecution is brought in the name of the United States of America entitles the government to no greater consideration than that accorded to any other party to a case. By the same token, it is entitled to no less consideration. All parties, whether government or individuals, stand as equals before the Court.

**CONSCIOUSNESS OF GUILT FROM FLIGHT**

You have heard evidence that the defendant fled after the alleged offense. If proved, the flight of a defendant after he knows he may be accused of a crime may tend to prove that the defendant believed that he was guilty. It may be weighed by you in this connection, together with all the other evidence.

However, flight may not always reflect feelings of guilt. Moreover, feelings of guilt, which are present in many innocent people, do not necessarily reflect actual guilt.

You are specifically cautioned that evidence of flight of a defendant may not be used by you as a substitute for proof of guilt. Flight does not create a presumption of guilt.

Whether evidence of flight does show that the defendant believed that he was guilty, and the significance, if any, to be given to the defendant's feelings on this matter are for you to determine.

**EVIDENCE OF SEXUAL ASSAULT**

You have heard evidence of sexual assault. Let me remind you that the defendant is not on trial for committing sexual assault, and sexual assault is not alleged in the indictment. Accordingly, you may not consider that evidence as proof that the Defendant committed the crime of sexual assault, nor may you consider that evidence as proof that the defendant has a criminal personality or bad character. The evidence is only

relevant to the elements of the counts charged in the Indictment, and may only be considered for that limited purpose.

## **II. INSTRUCTIONS ON THE SUBSTANTIVE LAW OF THE CASE**

Having explained the general guidelines by which you will evaluate the evidence, I will now instruct you with regard to the law that is applicable to your determinations in this case.

It is your duty as jurors to follow the law as stated to you in these instructions and to apply the rules of law to the facts that you find from the evidence. You will not be faithful to your oath as jurors if you find a verdict that is contrary to the law that I give to you.

However, it is the sole province of the jury to determine the facts in this case. I do not, by any instructions given to you, intend to persuade you in any way as to any question of fact.

The parties in this case have a right to expect that you will carefully and impartially consider all the evidence in the case, that you will follow the law as I state it to you, and that you will reach a just verdict.

### **ELEMENTS OF THE OFFENSE - KIDNAPPING (18 U.S.C. § 1201)**

The Defendant is charged in Counts One and Two of the indictment with kidnapping in violation of Section 1201(a)(1) of Title 18 of the United States Code. You will recall that Count



One of the Indictment charges Everett Simpson with unlawfully and willfully kidnapping C.R., transporting her across state lines, and holding her for ransom or reward or otherwise for his benefit. Count Two of the Indictment charges Everett Simpson with unlawfully and willfully kidnapping J.R., a minor to whom he was unrelated, transporting him across state lines, and holding him for ransom or reward or otherwise for his benefit. While the two counts are similar, there are important differences between them.

The relevant statute on this subject, Title 18 U.S.C. § 1201, provides in pertinent part:

Whoever unlawfully seizes, confines, . . . kidnaps, abducts, or carries away and holds for ransom or reward or otherwise any person, except in the case of a minor by the parent thereof, when . . . the person is willfully transported in interstate or foreign commerce . . . shall be guilty of a crime.

If the victim of an offense under this section has not attained the age of eighteen years, the offender has attained such age, and the offender is not a parent, grandparent, brother, sister, aunt, uncle, or an individual having legal custody of the victim, [the offender] shall be guilty of kidnapping a minor.

In order to prove the defendant guilty of the crime of kidnapping as charged in Count One of the Indictment, the government must prove each of the following five (5) essential elements beyond a reasonable doubt:

- 1) *First*, that the defendant seized, confined, kidnapped, abducted, or carried away C.R.;
- 2) *Second*, that the defendant held C.R. for ransom or reward or for any other reason;
- 3) *Third*, that C.R. was transported in interstate commerce or across state lines;
- 4) *Fourth*, that the defendant acted unlawfully, knowingly, and willfully; and
- 5) *Fifth*, that C.R. did not consent to the seizure, or if you find that she did consent, that she revoked her consent prior to being transported across state lines.

In order to prove the defendant guilty of the crime of kidnapping a minor in Count Two, the government must prove each of the following six (6) elements beyond a reasonable doubt:

- 1) *First*, that the defendant seized, confined, kidnapped, abducted, or carried away J.R.;
- 2) *Second*, that the defendant held J.R. for ransom or reward or for any other reason;

- 3) *Third*, that J.R. was transported in interstate commerce or across state lines;
- 4) *Fourth*, that the defendant acted unlawfully, knowingly, and willfully;
- 5) *Fifth*, that J.R. did not consent to the seizure or was incapable of consenting based on his age. If you find he was incapable of consenting based on his age, you should substitute C.R.'s decision for J.R.'s, in which case the government must prove beyond a reasonable doubt that C.R. did not consent to the seizure of J.R., or if you find that she did consent, that she revoked her consent prior to J.R. being transported across state lines; and
- 6) *Sixth*, that J.R. was a minor who had not attained the age of eighteen and who was not related to or in the legal custody of the defendant.

**FIRST ELEMENT - SEIZE, CONFINE, OR KIDNAP**

The first element which the government must prove beyond a reasonable doubt in Count One and Count Two is that the defendant seized, confined, kidnapped, abducted, or carried away the person.

"Kidnap" means to take and carry away a person by force against his or her will. "Seize," "confine," "abduct," and "carry away" all mean the physical or bodily taking and carrying away of a person, or the holding or restriction of someone by force or without that person's consent.

The nature of the crime of kidnapping requires that the kidnapper use some means of force—actual or threatened, physical or mental—in each elemental stage of the crime, so that the victim is taken, held, and transported against his or her will. To prove that an individual has been held against her will, the government need not show that the defendant actually used physical force or violence to restrain that person. You may rely on evidence you find credible showing that the defendant threatened, frightened, deceived, or coerced a person so as to cause the person to remain under the defendant's control. To be guilty of this charge of kidnapping, you must find that the defendant continued to hold the victim under their control during their transportation across state lines.

**SECOND ELEMENT - RANSOM OR REWARD OR OTHER REASON**

The second element of the offense that the government must prove beyond a reasonable doubt in Count One and Count Two is that defendant held the person for ransom, reward, or for some other reason.

In order to satisfy this element, the government need not prove that the reason the defendant took C.R. and/or J.R. was for reward or pecuniary gain. It is sufficient to satisfy this element if the government proves that at the time the defendant took C.R. and/or J.R., and while holding C.R. and/or J.R., he did so for some other purpose or reason.

Taking a person for the purpose of silencing her as a potential witness constitutes an unlawful holding for purposes of this element, as does holding the victims to prevent them from reporting an assault or other crime. Further, the government need not prove that the defendant had the same purpose throughout the kidnapping. The defendant's purpose can change, so long as he held the person for some purpose.

If you find that the defendant did not hold C.R. and/or J.R. for ransom, reward, or otherwise to his benefit as charged in the indictment, or if you have reasonable doubt as to this element, then it is your duty to acquit.

**THIRD ELEMENT - TRANSPORTATION IN INTERSTATE COMMERCE**

The third element of the offense that the government must prove beyond a reasonable doubt in Count One and Count Two of the Indictment is that C.R. or J.R. was transported in interstate commerce.

Interstate commerce simply means movement across a state line.

In order to satisfy this element, the government need not show that the defendant actually did the transporting of C.R. or J.R. Nor need the government show that the defendant knowingly crossed state lines while transporting C.R. or J.R. It is sufficient to satisfy this element if the government proves that C.R. or J.R. was transported or was moved from one state to another and that the defendant caused the interstate transportation to occur. "Transportation" begins when the victim is first moved from the place of his or her abduction and continues through any brief pauses in their travels.

The crime of kidnapping is complete when the defendant willfully transports a person against his or her will for a purpose described in the indictment, and the person does, in fact, cross a state line. Since the offense of kidnapping is complete at that time, any later agreement by the person to continue detention by the defendant is not a defense. However, you may consider any evidence that the person agreed to the detention with respect to the question whether she consented prior to the crossing of the state line.

**FOURTH ELEMENT – KNOWING AND WILLFUL CONDUCT**

The fourth element of the offense that the government must prove beyond a reasonable doubt in Count One and Two is that the defendant acted unlawfully, knowingly, and willfully.

Unlawfully simply means contrary to law.

An act is done knowingly if done purposely and intentionally, as opposed to mistakenly or inadvertently. Whether a defendant acted knowingly may be proven by the defendant's words and conduct and by all the facts and circumstances surrounding this case. An act is done willfully if it is done knowingly and with the intent to do something the law forbids, or with a bad purpose either to disobey or disregard the law. Whether a defendant acted willfully may be proven by the defendant's words and conduct and by all the facts and circumstances surrounding this case. In order to satisfy this element, the government must show that the defendant knew that C.R. or J.R. was not accompanying him voluntarily but rather was forced or coerced to come along.

**FIFTH ELEMENT - CONSENT**

The fifth element of the offense of kidnapping that the government must prove in Count One and Count Two beyond a reasonable doubt is lack of consent. In this case, there has been a claim that C.R. consented to the conduct charged in Count One. Consent can be a defense to kidnapping, but an alleged victim's consent must be specific and cannot be prospective in nature. To consent, in the context of a kidnapping charge, the alleged victim must have acted freely and voluntarily and not under the influence of threats, force, or duress. Even if a victim consented to being transported initially, he/she has the

opportunity to revoke their consent during the commission of the alleged crime, so long as the consent is revoked prior to the crossing of state lines.

In this case, there has been a claim that J.R. could not consent to the conduct charged in Count Two because of his age or circumstances. The government contends that J.R. was incapable of granting such consent, and it is the government's burden to prove beyond a reasonable doubt such incapacity. You must determine if J.R. consented to the conduct charged in Count Two or if J.R. was incapable of consenting based on his age and circumstances. In the event you find such incapacity, in order to satisfy the lack-of-consent element, the government must prove that J.R. was carried away and confined without the consent of his parent, C.R.

**SIXTH ELEMENT - THE VICTIM'S AGE**

The sixth element of the offense of kidnapping a minor that the government must prove beyond a reasonable doubt in Count Two is that J.R. was a minor not in the Defendant's legal custody. In other words, the government must show that J.R. has not attained the age of eighteen, that the defendant has obtained such age, and that the defendant is not a parent, a grandparent, a brother, a sister, an aunt, an uncle, or an individual having legal custody of the victim.



**ELEMENTS OF THE OFFENSE: INTERSTATE TRANSPORTATION OF STOLEN  
VEHICLES (18 U.S.C. § 2312)**

You will recall that Count Three of the Indictment charges Everett Simpson with knowingly and unlawfully transporting a stolen Kia Forte sedan across state lines. Count Four of the Indictment charges Everett Simpson with knowingly and unlawfully transporting a stolen GMC Savana van across state lines. The law and elements are the same for both counts.

The relevant statute on this subject is Title 18, United States Code section 2312. That section, in pertinent part, provides: "Whoever transports in interstate or foreign commerce a motor vehicle or aircraft, knowing the same to have been stolen, shall [commit a crime]."

In order to prove the defendant guilty of the transportation of a stolen vehicle as charged in Counts Three and Four, the government must prove each of the following elements beyond a reasonable doubt:

- (1) *First*, that the vehicle described in the Indictment was stolen;
- (2) *Second*, that the defendant unlawfully transported that vehicle in interstate commerce, or caused it to be transported; and
- (3) *Third*, that at the time of the transportation, the defendant knew that vehicle was stolen.

**FIRST ELEMENT: VEHICLE WAS STOLEN**

The first element the government must prove beyond a reasonable doubt is that the vehicle described in the indictment was stolen. A "vehicle" includes an automobile, truck, motorcycle, or any other self-propelled vehicle designed for running on land but not on rails.

The word "stolen" means any form of taking that deprives the owner of the use of a vehicle without the owner's consent. The vehicle does not have to be taken by force or physical violence. It does not have to be taken permanently. You must determine, however, whether, at the time the defendant acquired possession of the vehicle, he intended to take it for his own use, and, if so, whether he did so without the permission of the owner.

You must determine whether the defendant intentionally deprived the owner of the vehicle of the rights of ownership, without the owner's consent. In deciding whether a vehicle was stolen, you must first determine whether the owner was involuntarily deprived of the vehicle. It is not necessary that the government prove that illegal methods were used to gain possession of the vehicle, or that the owner never permitted the defendant to use the vehicle. The government satisfies its burden of proving the vehicle was stolen if it proves beyond a reasonable doubt that the defendant converted the vehicle to his

own use, against the owner's wishes, even if the defendant initially got the vehicle lawfully.

In considering whether the defendant's acquisition of the vehicle was against the owner's wishes, you may take into account any friendship or business relationship between the defendant and the owners.

**SECOND ELEMENT: TRANSPORTATION IN INTERSTATE COMMERCE**

The second element the government must prove beyond a reasonable doubt is that the vehicle was transported in interstate commerce. That is, you must determine whether the vehicle crossed between one state and another.

If you find that a vehicle was stolen in one state and was found in the defendant's possession in another state, then you may—but need not—find that the vehicle traveled in interstate commerce.

The defendant need not have intended or known of the vehicle's transport in interstate commerce. You do not have to decide whether the defendant actually physically drove the vehicle across state lines. The government satisfies its burden of proving transportation in interstate commerce if it proves beyond a reasonable doubt that the defendant caused the vehicle's transport across state lines, or performed a substantial step in furtherance of its interstate journey.

**THIRD ELEMENT: KNOWLEDGE THAT VEHICLE WAS STOLEN**

The third element the government must prove beyond a reasonable doubt is that the defendant knew, at the time of its interstate transport, that the vehicle was stolen. In deciding whether the defendant knew the vehicle was stolen at the time it was transported between states, you must focus upon his actual knowledge at that time.

Your decision whether the defendant acted knowingly at the time the stolen vehicle was transported involves a decision about the defendant's state of mind at the time the journey through interstate commerce occurred. It is obviously impossible to ascertain or prove directly what the operation of the defendant's mind was. You cannot look into a person's mind to see what his state of mind is or was. But a wise and intelligent consideration of all the facts and circumstances shown by the evidence will enable you to infer with a reasonable degree of accuracy the extent of the defendant's knowledge.

In our everyday affairs, we are continuously called upon to decide from the actions of others what their state of mind is. Experience has taught us that, frequently, actions speak louder, more clearly, than words. Therefore, you may well rely in part on circumstantial evidence in determining the extent of the defendant's knowledge.

Look at the defendant's actions in their particular contexts. Was a business transaction conducted in an irregular

manner? What were the circumstances of the defendant's conduct subsequent to the interstate transport? You must examine the acts, conduct, and surrounding circumstances of a given situation to help you determine the extent of the defendant's knowledge.

Your decision whether the defendant knew that the vehicle was stolen at the time of its interstate transport must be based, at least in part, on circumstantial evidence. You may rely on your own experiences and examine the situation and the actions of the people involved to help you determine the defendant's state of mind. If you decide that the vehicle was stolen, and that it traveled in interstate commerce, then an important piece of circumstantial evidence for you to consider in deciding whether the defendant knew the vehicle was stolen is the fact that the defendant was in possession of the recently stolen vehicle.

Possession may be satisfactorily explained through other circumstances or other evidence independent of any testimony by the defendant. You may, of course, consider any explanation the defendant has offered to explain his possession of the vehicle. It is for you to determine the reasonableness of the defendant's explanation. However, keep in mind that the defendant is not required to offer any explanation at all. While the absence of a satisfactory explanation for the possession of a recently stolen

vehicle allows you to find that the defendant knew the vehicle was stolen, you cannot find the defendant guilty unless the government proves beyond a reasonable doubt that the defendant knew the vehicle was stolen at the time of its interstate transport.

### **CONCLUSION**

I caution you, members of the jury, that you are here to determine whether the government has proven the defendant's guilt beyond a reasonable doubt. I remind you that the mere fact that this defendant has been indicted is not evidence against him. Also, the defendant is not on trial for any act or conduct or offense not alleged in the Indictment. Nor are you called upon to return a verdict as to the guilt or innocence of any other person or persons not on trial as a defendant in this case.

You should know that the punishment provided by law for the offenses charged in the Indictment is a matter exclusively within the province of the Judge, and should never be considered by the jury in any way in arriving at an impartial verdict as to the guilt or innocence of the accused.

It is your duty as jurors to consult with one another and to deliberate. Each of you must decide the case for yourself, but only after an impartial consideration of the evidence in the case with your other jurors. Do not hesitate to re-examine your

own views and change your opinion if you think that you were wrong. Do not, however, surrender your honest convictions about the case solely because of the opinion of your other jurors, or for the mere purpose of returning a verdict.

To return a verdict, it is necessary that every juror agree to the verdict. In other words, your verdict must be unanimous. In order to find the defendant guilty of the charged offense, you must find that the government has proven every element of the offense beyond a reasonable doubt.

At this time, I would like to offer my sincere thanks to the alternates.

Upon retiring to the jury room, your foreperson will preside over your deliberations and will be your spokesperson here in court. A verdict form has been prepared for your convenience. If you are able to reach an agreement as to the count contained in the Indictment, you will have your foreperson record a verdict of guilty or not guilty. Your foreperson will then sign and date the verdict form and you will then return to the courtroom.

If, during your deliberations you should desire to communicate with the Court, please put your message or question in writing signed by the foreperson, and pass the note to the marshal who will bring it to my attention. I will then respond as promptly as possible, either in writing or by having you

returned to the courtroom so that I can speak with you. I caution you, however, with regard to any message or question you might send, that you should never state or specify your numerical division at the time.

You have been permitted to take notes during the trial for use in your deliberations. You may take these notes with you when you retire to deliberate. They may be used to assist your recollection of the evidence, but your memory, as jurors, controls. Your notes are not evidence, and should not take precedence over your independent recollections of the evidence. The notes that you took are strictly confidential. Do not disclose your notes to anyone other than the other jurors. Your notes should remain in the jury room and will be collected at the end of the case.

A copy this charge will go with you into the jury room for your use.

I appoint **REDACTED** as your foreperson.

Dated at Burlington, Vermont this 18th day of April 2023.

/s/ William K. Sessions III  
William K. Sessions III  
District Court Judge