

1       **IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF IDAHO**

2

3	- - - - -	x
4	UNITED STATES OF AMERICA,	:
5		:
6	Plaintiff,	:
7		:
8	vs.	:
9		:
10	EDGAR J. STEELE,	:
11		:
12	Defendant.	:
13	- - - - -	x

Case No. 10-00148-N-BLW

**JURY TRIAL**

13       **REPORTER'S TRANSCRIPT OF PROCEEDINGS**

14       before B. Lynn Winmill, Chief District Judge

16       Volume 8

17       May 5, 2011

19       Pages 1563 to 1581

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## P R O C E E D I N G S

Thursday, May 5, 2011

(Jury resumes deliberations.)

(Jury absent.)

## JURY QUESTION

THE COURT: I'll repeat what I just said.

Upon receiving the jury's note, which says, "Can we please have the word," quote, "'caused,'" closed quote, "defined further as written and used in Count 1 of the charges," quote, "'beginning on or about," ellipsis, "caused another to travel in interstate commerce," ellipsis, closed quote, signed by a juror, presumably the foreperson; I propose to respond as follows:

"As to Count 1, the defendant," quote, "'caused another to travel in interstate commerce,'" closed quote, "if the other individual traveled in interstate commerce and would not have done so but for the defendant's conduct."

I have opted to instruct in this way because the word "cause," as we have researched this further, is not a word of common parlance. It's a word of -- it's a legal term, and the cases are quite uniform in suggesting that what is meant

MR. McALLISTER: Yes, Your Honor. The defense objects to that instruction. The very problem is highlighted by the fact that since 9:20 or since the question was presented, both the government has its interpretation, the defense has its interpretation, and the court, I think, has very diligently researched it, as well.

But what we have found under Ninth Circuit law is that the court should state to them, "Under our law, you must consider the instructions provided as a whole, and I am unable to provide you with any further instructions or definitions."

And we base that upon the decision in United States versus Alvarez-Valenzuela, 231 F.3d. 1198 at 1202, Ninth Circuit 2000; United States versus Ramirez, 537 F.3d. 1075 at 1080 and 1081, Ninth Circuit 2008; United States versus Perez, P-E-R-E-Z, 11 -- excuse me -- 116 F.3d. 840 at pages 844 and 845, Ninth Circuit 1997.

We believe that the law of the circuit is that the court should tell the jury to rely on the previous instructions. And the reason that is is because, as the court knows, both sides are entitled to submit instructions. The burden is on

by the statute is but-for causation, not legal or proximate causation.

The notion is that if you set -- if you set in motion a chain of events with the intent that a murder be committed and those chain of events result in the interstate commerce facility being used, that that satisfies the jurisdictional requirement of the statute. And we have got cases, I think, from a number of circuits so holding, and some district courts, as well.

I'm not absolutely sure that's what the jury is hung up on. I guess we may get another note if that's not their concern. But it strikes me that there was a shortcoming in our instructions not to define causation, since that is a -- not a term of general parlance or common parlance but, rather, a legal term.

And so, for that reason, I have opted to instruct in this fashion. So I'll hear any objections you have for the record.

MS. WHELAN: No. Thank you, Your Honor.

THE COURT: Excuse me?

MR. HAWS: No objection.

MS. WHELAN: No objection.

THE COURT: From the defense?

the government to prove their case, and they did not submit several instructions regarding interstate commerce, about the word "cause," and about other topics.

And the defense, you know, I think objected to one instruction -- one or two instructions that the court decided to give. And otherwise, as the case law says, the parties accepted the instructions, and it seems -- it seems that the Ninth Circuit has held, once they do that, the court shouldn't give them any further instructions.

THE COURT: All right. I'll note that. I'm going to actually review those cases. Unless I'm persuaded that the court cannot provide definitional instructions after the jury begins its deliberations, I'm going to go ahead and send this in.

I'll notify you if I change my mind. But unless I notify you otherwise, I do intend to go ahead and send this in to the jury. But I want to review the cases you have cited. I have not -- often that is exactly what we do if we think they're just not looking at the instructions hard enough. But if it appears there is some

<p style="text-align: right;">1576</p> <p>1 definitional problem that needed to be clarified</p> <p>2 for the jury, then I think it is proper for the</p> <p>3 court to rectify that problem.</p> <p>4 But I'll look at the authority you've</p> <p>5 cited to make sure that we're not precluded from</p> <p>6 doing so. If we're precluded, then, of course, if</p> <p>7 the case law is clear to that effect, then I'll</p> <p>8 probably do exactly what Mr. McAllister suggested</p> <p>9 here.</p> <p>10 All right. Thank you, Counsel.</p> <p>11 MR. AMENDOLA: Judge, may I bring up one</p> <p>12 other quick issue?</p> <p>13 THE COURT: Yes.</p> <p>14 MR. AMENDOLA: Would the court have any</p> <p>15 problem if -- depending on what happens, I might</p> <p>16 want to leave.</p> <p>17 THE COURT: Sure. As long as one attorney</p> <p>18 is here, I don't --</p> <p>19 MR. AMENDOLA: But I'm typically supposed to</p> <p>20 be here, as well.</p> <p>21 THE COURT: As pro hac vice, yeah.</p> <p>22 MR. AMENDOLA: If that's okay, if I need to</p> <p>23 leave, he can take --</p> <p>24 THE COURT: No problem.</p> <p>25 MR. AMENDOLA: Thank you.</p>	<p style="text-align: right;">1577</p> <p>1 (Recess.)</p> <p>2 (Jury present.)</p> <p>3 THE CLERK: The court will now hear day</p> <p>4 eight of jury trial in Criminal Case 10-148-N-BLW,</p> <p>5 United States of America versus Edgar Steele.</p> <p>6 THE COURT: I would note for the record that</p> <p>7 the jury has advised the court they have reached a</p> <p>8 verdict in this matter.</p> <p>9 Ms. Schroeder, you're the foreperson.</p> <p>10 Is that correct?</p> <p>11 JUROR: Yes.</p> <p>12 THE COURT: Has the jury reached a unanimous</p> <p>13 verdict?</p> <p>14 JUROR: We have.</p> <p>15 THE COURT: Would you hand that to</p> <p>16 Mr. Severson so I can examine it?</p> <p>17 All right. Ladies and gentleman, I'm</p> <p>18 going to have the verdict published by having it</p> <p>19 read by Ms. Gearhart. I would ask you to listen</p> <p>20 very carefully as the verdict is read to ensure</p> <p>21 that it conforms with your individual verdict in</p> <p>22 all respects.</p> <p>23 Ms. Gearhart.</p> <p>24 I'll ask the defendant to please stand.</p> <p>25 JURY VERDICT</p>
<p style="text-align: right;">1578</p> <p>1 THE CLERK: "United States of America versus</p> <p>2 Edgar J. Steele. We, the jury, find unanimously</p> <p>3 as follows:</p> <p>4 "As to Count 1 of the indictment</p> <p>5 charging the defendant, Edgar J. Steele, with use</p> <p>6 of interstate commerce facilities in commission of</p> <p>7 murder for hire, in violation of 18 U.S. Code</p> <p>8 Section 1958, between on or about December 2009</p> <p>9 and June 11th, 2010, defendant is guilty.</p> <p>10 "As to Count 2 of the indictment</p> <p>11 charging the defendant, Edgar J. Steele, with</p> <p>12 aiding and abetting use of explosive material to</p> <p>13 commit a federal felony in violation of 18 U.S.</p> <p>14 Code section 844(h), between on or about May 27th,</p> <p>15 2010, and May 31st, 2010, the defendant is guilty.</p> <p>16 "As to Count 3 of the indictment</p> <p>17 charging the defendant, Edgar J. Steele, with</p> <p>18 aiding and abetting possession of a destructive</p> <p>19 device in relation to a crime of violence in</p> <p>20 violation of 18 U.S. Code section 924(c)(1)(B)(ii)</p> <p>21 between on or about May 27th, 2010, and May 31st,</p> <p>22 2010, the defendant is guilty.</p> <p>23 "As to Count 4 of the indictment</p> <p>24 charging the defendant, Edgar J. Steele, with</p> <p>25 tampering with a victim in violation of 18 U.S.</p>	<p style="text-align: right;">1579</p> <p>1 Code section 1512(b)(3) between on or about June</p> <p>2 11th, 2010, and June 16th, 2010, the defendant is</p> <p>3 guilty.</p> <p>4 "Signed by the foreperson, dated May</p> <p>5 5th, 2011."</p> <p>6 THE COURT: Ladies and gentleman of the</p> <p>7 jury, is this your verdict, so say you one, so say</p> <p>8 you all?</p> <p>9 (Jury affirms.)</p> <p>10 THE COURT: Counsel, do you wish to have the</p> <p>11 jury polled?</p> <p>12 MR. McALLISTER: No, Your Honor.</p> <p>13 THE COURT: The government?</p> <p>14 MR. HAWS: No.</p> <p>15 THE COURT: All right. You can go ahead and</p> <p>16 be seated, Mr. Steele.</p> <p>17 Ladies and gentleman, I'm going to</p> <p>18 direct the clerk to file and record the verdict.</p> <p>19 I'm going to read to you my final instruction.</p> <p>20 CLOSING JURY INSTRUCTION</p> <p>21 THE COURT: You have now completed your</p> <p>22 duties as jurors in this case and are discharged</p> <p>23 with the sincere thanks of this court. The</p> <p>24 question may arise as to whether you may discuss</p> <p>25 the case with the attorneys or with anyone else.</p>

1 For your guidance, the court instructs you that  
 2 whether you talk to the attorneys or to anyone  
 3 else is entirely your own decision. It is proper  
 4 for you to discuss this case if you want to, but  
 5 you are not required to do so, and you may choose  
 6 not to discuss the case with anyone at all.

7 If you choose to talk to someone about  
 8 this case, you may tell them as much or as little  
 9 as you like about your deliberations or the facts  
 10 that influenced your decisions.

11 If anyone persists in discussing the  
 12 case over your objection or becomes critical of  
 13 your service, either before or after any  
 14 discussion has begun, you may report it to me. Of  
 15 course, I would take appropriate action.

16 Let me indicate that I will schedule  
 17 sentencing in this matter for August 22nd, 2011,  
 18 in Coeur d'Alene at 9:00 a.m. I'll order a  
 19 presentence report, which will be due on July  
 20 18th, 2011.

21 Counsel will have 14 days under Rule 16  
 22 of the Federal Rules of Criminal Procedure to file  
 23 their objections. Those must be filed by August  
 24 1st, 2011. And then the final report will be due  
 25 to court and counsel by August 15th, 2011.

1 I assume that the government seeks to  
 2 detain the defendant pending sentencing?

3 MS. WHELAN: Yes, Your Honor.

4 THE COURT: All right. I will order the  
 5 defendant's continued detention pending sentencing  
 6 in this matter.

7 Counsel, is there anything else to come  
 8 before the court?

9 MR. HAWS: Nothing from the United States,  
 10 Your Honor.

11 THE COURT: Mr. McAllister?

12 MR. McALLISTER: No, Your Honor.

13 THE COURT: If there is nothing else to come  
 14 before the court, we will be adjourned.

15 (Proceedings concluded at 12:40 p.m.)  
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1        R E P O R T E R ' S   C E R T I F I C A T E

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I, T a m a r a I. H o h e n l e i t n e r, O f f i c i a l  
C o u r t R e p o r t e r, S t a t e o f I d a h o, d o e s h e r e b y  
c e r t i f y :

T h a t I a m t h e r e p o r t e r w h o t r a n s c r i b e d  
t h e p r o c e e d i n g s h a d i n t h e a b o v e - e n t i t l e d a c t i o n  
i n m a c h i n e s h o r t h a n d a n d t h e r e a f t e r t h e s a m e w a s  
r e d u c e d i n t o t y p e w r i t i n g u n d e r m y d i r e c t  
s u p e r v i s i o n ; a n d

T h a t t h e f o r e g o i n g t r a n s c r i p t c o n t a i n s a  
f u l l, t r u e, a n d a c c u r a t e r e c o r d o f t h e p r o c e e d i n g s  
h a d i n t h e a b o v e a n d f o r e g o i n g c a u s e .

I N W I T N E S S W H E R E O F, I h a v e h e r e u n t o s e t  
m y h a n d J u n e 2 4, 2 0 1 1 .

- s -

T a m a r a I. H o h e n l e i t n e r  
O f f i c i a l C o u r t R e p o r t e r  
C S R N o . 6 1 9

	<b>4</b>	<b>attorney</b> <sup>[1]</sup> - 1576:17 <b>attorneys</b> <sup>[2]</sup> - 1579:25, 1580:2 <b>August</b> <sup>[3]</sup> - 1580:17, 1580:23, 1580:25 <b>authority</b> <sup>[1]</sup> - 1576:4	<b>CLOSING</b> <sup>[1]</sup> - 1579:20 <b>Code</b> <sup>[4]</sup> - 1578:7, 1578:14, 1578:20, 1579:1 <b>Coeur</b> <sup>[1]</sup> - 1580:18 <b>commerce</b> <sup>[6]</sup> - 1572:12, 1572:18, 1572:19, 1573:6, 1575:3, 1578:6 <b>commission</b> <sup>[1]</sup> - 1578:6 <b>commit</b> <sup>[1]</sup> - 1578:13 <b>committed</b> <sup>[1]</sup> - 1573:5 <b>common</b> <sup>[2]</sup> - 1572:23, 1573:16 <b>completed</b> <sup>[1]</sup> - 1579:21 <b>concern</b> <sup>[1]</sup> - 1573:13 <b>concluded</b> <sup>[1]</sup> - 1581:15 <b>conduct</b> <sup>[1]</sup> - 1572:20 <b>conforms</b> <sup>[1]</sup> - 1577:21 <b>consider</b> <sup>[1]</sup> - 1574:10 <b>contains</b> <sup>[1]</sup> - 1582:13 <b>continued</b> <sup>[1]</sup> - 1581:5 <b>correct</b> <sup>[1]</sup> - 1577:10 <b>counsel</b> <sup>[1]</sup> - 1580:25 <b>Counsel</b> <sup>[4]</sup> - 1576:10, 1579:10, 1580:21, 1581:7 <b>Count</b> <sup>[6]</sup> - 1572:10, 1572:16, 1578:4, 1578:10, 1578:16, 1578:23 <b>course</b> <sup>[2]</sup> - 1576:6, 1580:15 <b>Court</b> <sup>[2]</sup> - 1582:6, 1582:22 <b>court</b> <sup>[16]</sup> - 1574:6, 1574:9, 1574:22, 1574:24, 1575:7, 1575:11, 1575:15, 1576:3, 1576:14, 1577:3, 1577:7, 1579:23, 1580:1, 1580:25, 1581:8, 1581:14 <b>courts</b> <sup>[1]</sup> - 1573:10 <b>crime</b> <sup>[1]</sup> - 1578:19 <b>Criminal</b> <sup>[2]</sup> - 1577:4, 1580:22 <b>critical</b> <sup>[1]</sup> - 1580:12 <b>CSR</b> <sup>[1]</sup> - 1582:22	<b>dated</b> <sup>[1]</sup> - 1579:4 <b>days</b> <sup>[1]</sup> - 1580:21 <b>December</b> <sup>[1]</sup> - 1578:8 <b>decided</b> <sup>[1]</sup> - 1575:7 <b>decision</b> <sup>[2]</sup> - 1574:14, 1580:3 <b>decisions</b> <sup>[1]</sup> - 1580:10 <b>defendant</b> <sup>[11]</sup> - 1572:16, 1577:24, 1578:5, 1578:9, 1578:11, 1578:15, 1578:17, 1578:22, 1578:24, 1579:2, 1581:2 <b>defendant's</b> <sup>[2]</sup> - 1572:20, 1581:5 <b>defense</b> <sup>[4]</sup> - 1573:25, 1574:2, 1574:5, 1575:5 <b>define</b> <sup>[1]</sup> - 1573:15 <b>defined</b> <sup>[1]</sup> - 1572:9 <b>definitional</b> <sup>[2]</sup> - 1575:16, 1576:1 <b>definitions</b> <sup>[1]</sup> - 1574:13 <b>deliberations</b> <sup>[3]</sup> - 1572:3, 1575:17, 1580:9 <b>destructive</b> <sup>[1]</sup> - 1578:18 <b>detain</b> <sup>[1]</sup> - 1581:2 <b>detention</b> <sup>[1]</sup> - 1581:5 <b>device</b> <sup>[1]</sup> - 1578:19 <b>diligently</b> <sup>[1]</sup> - 1574:7 <b>direct</b> <sup>[2]</sup> - 1579:18, 1582:11 <b>discharged</b> <sup>[1]</sup> - 1579:22 <b>discuss</b> <sup>[3]</sup> - 1579:24, 1580:4, 1580:6 <b>discussing</b> <sup>[1]</sup> - 1580:11 <b>discussion</b> <sup>[1]</sup> - 1580:14 <b>district</b> <sup>[1]</sup> - 1573:10 <b>done</b> <sup>[1]</sup> - 1572:20 <b>due</b> <sup>[2]</sup> - 1580:19, 1580:24 <b>duties</b> <sup>[1]</sup> - 1579:22
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