

APPENDIX

A-1

**UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

For rules and forms visit
www.ca11.uscourts.gov

September 20, 2018

MEMORANDUM TO COUNSEL OR PARTIES

Appeal Number: 17-12894-BB and 17-13893-BB
Case Style: USA v. Salih Uces
District Court Docket No: 3:16-cr-00182-MMH-PDB-1

The enclosed order has been entered on petition(s) for rehearing.

See Rule 41, Federal Rules of Appellate Procedure, and Eleventh Circuit Rule 41-1 for information regarding issuance and stay of mandate.

Sincerely,

DAVID J. SMITH, Clerk of Court

Reply to: Carol R. Lewis, BB/lt
Phone #: (404) 335-6179

REHG-1 Ltr Order Petition Rehearing

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 17-12894-BB ; 17-13893 -BB

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

SALIH ZEKI UCES,

Defendant - Appellant.

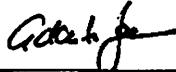
Appeal from the United States District Court
for the Middle District of Florida

BEFORE: MARTIN, JORDAN and JILL PRYOR, Circuit Judges.

PER CURIAM:

The petition(s) for panel rehearing filed by Salih Uces is DENIED.

ENTERED FOR THE COURT:



UNITED STATES CIRCUIT JUDGE

ORD-41

APPENDIX

A-2

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

Nos. 17-12894; 17-13893
Non-Argument Calendar

D.C. Docket No. 3:16-cr-00182-MMH-PDB-1

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

SALIH ZEKI UCES,

Defendant - Appellant.

Appeals from the United States District Court
for the Middle District of Florida

(August 10, 2018)

Before MARTIN, JORDAN, and JILL PRYOR, Circuit Judges.

PER CURIAM:

A jury convicted Salih Uces of one count of international parental kidnapping, *see* 18 U.S.C. § 1204, for removing or retaining his daughter outside of the United States with the intent to obstruct the parental rights of his daughter’s mother, Esra Memili. Mr. Uces raises two issues on appeal. First, he argues that the district court constructively amended the indictment by including the term “knowingly” in the jury instructions as an element of § 1204. He contends that the addition of this term allowed him to be convicted “based solely on his knowingly removing or retaining his child” without regard to the “intent to obstruct another’s parental rights.” Second, he argues that, because he and Ms. Memili had equal parental rights, a conviction for removing the child is legally insufficient and, therefore, he should receive a new trial. After careful review, we affirm.

I

We address first Mr. Uces’ contention that the district court constructively amended the indictment by inserting the term “knowingly” into the jury instructions. No objection was made at trial, so we review only for plain error. *See United States v. Madden*, 733 F.3d 1314, 1321 (11th Cir. 2013). Mr. Uces must demonstrate that “(1) an error occurred, (2) the error was plain, and (3) the error affected substantial rights.” *United States v. Felts*, 579 F.3d 1341, 1344 (11th Cir. 2009) (citing *United States v. Olano*, 507 U.S. 725, 732 (1993)). “There can be no plain error where there is no precedent from the Supreme Court or this Court

directly resolving an issue.” *United States v. Sammour*, 816 F.3d 1328, 1337 (11th Cir. 2016) (alterations adopted). “A constructive amendment occurs when the essential elements of the offense contained in the indictment are altered to broaden the possible bases for conviction beyond what is contained in the indictment.” *Madden*, 733 F.3d at 1318 (quotation marks omitted).

The crime of international parental kidnapping occurs when one “removes a child from the United States . . . or retains a child (who has been in the United States) outside the United States with the intent to obstruct the lawful exercise of parental rights.” 18 U.S.C. § 1204. Mr. Uces’ indictment tracked that statutory language. *See* D.E. 12. When instructing the jury, the district court explained that Mr. Uces could be found guilty if the government proved the following elements beyond a reasonable doubt:

First, that the child was previously in the United States;

Second, that Salih Zeki Uces, either:

- (a) knowingly took the child from the United States to another country; or
- (b) beginning on or about September 16, 2016, until on or about November 10, 2016, knowingly retained the child outside the United States; and

Third, that Salih Zeki Uces, acted with the intent to obstruct the lawful exercise of another person’s parental rights.

D.E. 61 at 7–8. The district court also instructed the jury on the meaning of various terms, including the term knowingly, which was defined as “voluntarily and intentionally and not because of a mistake or by accident” but did not require that Mr. Uces knew that “he was violating a criminal law.” *Id.* at 12.

During deliberations, the jury asked two questions, with the second question specifically focusing on when “the act of intent to obstruct the lawful exercise of a person’s parental rights [has] to occur.” D.E. 58-1 at 5. The district court responded that it was “not entirely sure what you are referring to as ‘the act of intent’” and provided an additional instruction:

Consistent with [the prior jury instruction], Mr. Uces can be found guilty of this offense only if:

- A. the Government proves beyond a reasonable doubt
 1. that the child was previously in the United States;
 2. that Mr Uces knowingly took the child from the United States to another country, and
 3. that in doing so, he acted with the intent to obstruct the lawful exercise of another person’s parental rights;

Or

- B. the Government proves beyond a reasonable doubt
 1. that the child was previously in the United States;
 2. that beginning on or about September 16, 2016, until on or about November 10, 2016, Mr. Uces knowingly retained the child outside the United States,
 3. that in doing so, Mr. Uces acted with the intent to obstruct the lawful exercise of another person’s parental rights.

Id. at 6.

Although he did not object to any of these instructions at trial, Mr. Uces now contends that the insertion of the term “knowingly” constructively amended the indictment and would allow the jury to convict him solely for knowing removal or retention without the intent to obstruct Ms. Memili’s parental rights. We disagree. Accepting this argument would require us to violate two cardinal rules. First, it asks us to assume that the jury completely ignored the instruction on the intent to obstruct the parental rights element, when “we must presume that juries follow their instructions.” *United States v. Roy*, 855 F.3d 1133, 1186 (11th Cir. 2017) (en banc). *See also Olano*, 507 U.S. at 740 (“We presume that jurors, conscious of the gravity of their task, attend closely the particular language of the trial court’s instructions in a criminal case and strive to understand, make sense of, and follow the instructions given them.”) (alterations adopted). Second, it asks us to look at the jury instructions in isolation. To the contrary, “instructions must be evaluated not in isolation but in the context of the entire charge” and “there is no reason for reversal even though isolated clauses may, in fact, be confusing, technically imperfect, or otherwise subject to criticism.” *United States v. Gonzalez*, 834 F.3d 1206, 1222 (11th Cir. 2016). *See also United States v. Park*, 421 U.S. 658, 674–75 (1975) (“[I]n reviewing jury instructions, our task is to view the charge itself as part of the whole trial. Often statements taken from the charge, seemingly

prejudicial on their face, are not so when considered in the context of the entire record of the trial.”) (quotation marks omitted).

The term “knowingly” may have indeed been unnecessary. As Mr. Uces notes, it is unlikely that a parent could act with the requisite intent to obstruct parental rights without knowingly removing or retaining his or her child outside the United States. Such removals are unlikely to happen by mistake or accident. Its inclusion did not, however, broaden the bases for conviction because the jury was consistently reminded that it could only convict Mr. Uces if it found that he “acted with the intent to obstruct the lawful exercise of another person’s parental rights.” *See* D.E. 61 at 7–8 (original jury instruction); D.E. 58-1 at 6 (response to jury question). Beyond this, Mr. Uces has not pointed to any precedent that would establish that the inclusion of “knowingly” was error, so he has not met his burden to show plain error. *See Sammour*, 816 F.3d at 1337.

II

We next address Mr. Uces’ argument that a conviction based on the theory of “removal” is legally insufficient because he and Ms. Memili had equal parental rights. Mr. Uces admits that the alleged error was not objected to at trial, so we review for plain error. *See Madden*, 733 F.3d at 1321. The government contends that Mr. Uces’ argument is actually a challenge to the sufficiency of the evidence which, because he did “not move for acquittal or otherwise preserve an argument

regarding the sufficiency of the evidence” we “will reverse the conviction only where doing so is necessary to prevent a manifest miscarriage of justice.” *United States v. Fries*, 725 F.3d 1286, 1291 (11th Cir. 2013). Under either theory, Mr. Uces’ challenge fails.

First, the fact that Mr. Uces had equal parental rights does not render the removal theory legally insufficient. “Congress enacted the International Parental Kidnapping Crime Act in 1993 to ‘deter the removal of children from the United States to foreign countries in order to obstruct parental rights.’” *United States v. Newman*, 614 F.3d 1232, 1235 (11th Cir. 2010) (quoting H.R. Rep. No. 103-390, at 1 (1993)). The statute makes clear that it prohibits both removal and retention of a child outside the United States if it is done “with the intent to obstruct the *other parent’s* lawful exercise of his or her parental rights.” *Id.* at 1236 (citing 18 U.S.C. § 1204(a)) (emphasis added). Mr. Uces’ argument that there can be no violation of § 1204 because he had equal parental rights misreads the statute. The statute criminalizes his intent to obstruct Ms. Memili’s parental rights—i.e., time sharing and access to her daughter—without regard to whether or not Mr. Uces also had equal parental rights. *See* 18 U.S.C. § 1204(b)(2) (defining “parental rights” to include “the right to physical custody of the child [] whether joint or sole (and includes visiting rights)”) (emphasis added). *See also United States v. Fazal-Ur-*

Raheman-Fazal, 355 F.3d 40, 46 (1st Cir. 2004) (“That [parents] shared custody of their children is of no import under [§ 1204].”).

Second, construing this challenge as one to the sufficiency of the evidence, ample evidence supports the jury’s guilty verdict. Mr. Uces asked to have the couples’ daughter stay with him for the weekend of September 16, 2016, and sent Ms. Memili a reservation for a Red Roof Inn in Jacksonville, where he said they would be staying. *See* D.E. 98 at 172–73, 183. In fact, Mr. Uces had already purchased tickets to Turkey, *see* D.E. 100 at 88, and told the hotel not to disclose that he did not check in, *see* D.E. 99 at 65. Other evidence at trial is inconsistent with Mr. Uces’ theory that the trip was a mere vacation. Mr. Uces’ computer revealed web browsing history on child custody laws, child abduction, and international treaties. *See id.* at 188–90. He did not book a return flight to Jacksonville and did not board his return flight from Turkey to New York. *See id.* at 159–64. He also had given his brother power of attorney to sell his car in the United States and terminated the rental agreement on his safety deposit box right before flying to Turkey. *See id.* at 170, 198. *See United States v. Miller*, 626 F.3d 682, 691 (2d Cir. 2010) (sufficient evidence to support conviction under § 1204 where evidence was presented to show that the defendant remained in Canada despite knowledge of court orders granting husband parental rights).

Because sufficient evidence viewed in the light most favorable to the jury's verdict supports Mr. Uces' conviction, it is clear that he has failed to show that there has been a manifest miscarriage of justice. *See Fries*, 725 F.3d at 1291 (noting that the manifest miscarriage of justice standard "requires us to find either that the record is devoid of evidence of an essential element of the crime or 'that the evidence on a key element of the offense is so tenuous that a conviction would be shocking'"') (quoting *United States v. Milkintas*, 470 F.3d 1339, 1343 (11th Cir. 2006)).

III

For the foregoing reasons, we affirm Mr. Uces' conviction.

AFFIRMED.

**UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

For rules and forms visit
www.ca11.uscourts.gov

August 10, 2018

MEMORANDUM TO COUNSEL OR PARTIES

Appeal Number: 17-12894-BB ; 17-13893 -BB
Case Style: USA v. Salih Uces
District Court Docket No: 3:16-cr-00182-MMH-PDB-1

This Court requires all counsel to file documents electronically using the Electronic Case Files ("ECF") system, unless exempted for good cause. Enclosed is a copy of the court's decision filed today in this appeal. Judgment has this day been entered pursuant to FRAP 36. The court's mandate will issue at a later date in accordance with FRAP 41(b).

The time for filing a petition for rehearing is governed by 11th Cir. R. 40-3, and the time for filing a petition for rehearing en banc is governed by 11th Cir. R. 35-2. Except as otherwise provided by FRAP 25(a) for inmate filings, a petition for rehearing or for rehearing en banc is timely only if received in the clerk's office within the time specified in the rules. Costs are governed by FRAP 39 and 11th Cir.R. 39-1. The timing, format, and content of a motion for attorney's fees and an objection thereto is governed by 11th Cir. R. 39-2 and 39-3.

Please note that a petition for rehearing en banc must include in the Certificate of Interested Persons a complete list of all persons and entities listed on all certificates previously filed by any party in the appeal. See 11th Cir. R. 26.1-1. In addition, a copy of the opinion sought to be reheard must be included in any petition for rehearing or petition for rehearing en banc. See 11th Cir. R. 35-5(k) and 40-1 .

Counsel appointed under the Criminal Justice Act (CJA) must submit a voucher claiming compensation for time spent on the appeal no later than 60 days after either issuance of mandate or filing with the U.S. Supreme Court of a petition for writ of certiorari (whichever is later) via the eVoucher system. Please contact the CJA Team at (404) 335-6167 or cja_evoucher@ca11.uscourts.gov for questions regarding CJA vouchers or the eVoucher system.

For questions concerning the issuance of the decision of this court, please call the number referenced in the signature block below. For all other questions, please call Carol R. Lewis, BB at (404) 335-6179.

Sincerely,

DAVID J. SMITH, Clerk of Court

Reply to: Jeff R. Patch
Phone #: 404-335-6161

OPIN-1 Ntc of Issuance of Opinion

APPENDIX

A-3

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

UNITED STATES OF AMERICA

v.

SALIH ZEKI UCES

Case Number: 3:16-cr-182-J-34PDB

USM Number: 09685-104

Ethan Andrew Way, Retained
Post Office Box 10017
Tallahassee, FL 32302

JUDGMENT IN A CRIMINAL CASE

The defendant was found guilty of Count One of the Indictment. The defendant is adjudicated guilty of this offense:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count Number(s)</u>
18 U.S.C. § 1204	International Parental Kidnapping	November 2016	One

The defendant is sentenced as provided in pages 2 through 5 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

IT IS ORDERED that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of any material change in the defendant's economic circumstances.

Date of Imposition of Sentence:

June 12, 2017


Marcia Morales Howard
UNITED STATES DISTRICT JUDGE

June 12, 2017

Salih Zeki Uces
3:16-cr-182-J-34PDB

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of **TWENTY-ONE (21) MONTHS**.

The Court recommends to the Bureau of Prisons that the defendant be incarcerated at the facility located at Coleman, Florida.

The defendant is remanded to the custody of the United States Marshal.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By: _____
Deputy U.S. Marshal

Salih Zeki Uces
3:16-cr-182-J-34PDB

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of **ONE (1) YEAR**.

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
 - The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse.
4. You must cooperate in the collection of DNA as directed by the probation officer.

The defendant shall comply with the standard conditions that have been adopted by this court (set forth below).

The defendant shall also comply with the additional conditions on the attached page.

Salih Zeki Uces
3:16-cr-182-J-34PDB

STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchucks or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: www.uscourts.gov.

Defendant's Signature: _____

Date: _____

Salih Zeki Uces
3:16-cr-182-J-34PDB

ADDITIONAL CONDITIONS OF SUPERVISED RELEASE

1. Defendant shall participate in a mental health treatment program (outpatient and/or inpatient) and follow the probation officer's instructions regarding the implementation of this court directive. Further, defendant shall contribute to the costs of these services not to exceed an amount determined reasonable by the Probation Office's Sliding Scale for Mental Health Treatment Services.
2. Defendant shall provide the probation officer access to any requested financial information.
3. Defendant shall be prohibited from incurring new credit charges, opening additional lines of credit, or obligating himself for any major purchases without approval of the probation officer.
4. Defendant is not permitted to travel outside of the Middle District of Florida without written permission from his Probation Officer.
5. Defendant shall surrender his passport until the completion of his term of supervised release.
6. Defendant is prohibited from having any unsupervised contact with the minor child until such time as the state court has entered an appropriate visitation order.

CRIMINAL MONETARY PENALTIES

The defendant must pay the following total criminal monetary penalties under the schedule of payments set forth in the Schedule of Payments.

<u>Assessment</u>	<u>JVTA Assessment</u> ¹	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$100.00	\$0	To be determined

The determination of restitution is deferred until August 21, 2017, at 9:30 a.m. An Amended Judgment in a Criminal Case (AO 245C) will be entered after such determination.

SCHEDULE OF PAYMENTS

The Special Assessment in the amount of **\$100.00** is due in full and immediately.

Unless the court has expressly ordered otherwise in the special instructions above, if this judgment imposes a period of imprisonment, payment of criminal monetary penalties shall be due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court, unless otherwise directed by the court, the probation officer, or the United States attorney.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) JVTA assessment, (8) penalties, and (9) costs, including cost of prosecution and court costs.

¹ Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.

² Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

APPENDIX

A-4

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION**

UNITED STATES OF AMERICA

vs.

CASE NO. 3:16-cr-182-J-34PDB

SALIH ZEKI UCES

JURY INSTRUCTION NO. 1

Members of the Jury:

It is my duty to instruct you on the rules of law that you must use in deciding this case. After I have completed these instructions you will go to the jury room and begin your discussions – what we call your deliberations.

You must decide whether the Government has proved the specific facts necessary to find the Defendant guilty beyond a reasonable doubt.

JURY INSTRUCTION NO. 2

Your decision must be based only on the evidence presented here. You must not be influenced in any way by either sympathy for or prejudice against the Defendant or the Government.

You must follow the law as I explain it – even if you do not agree with the law – and you must follow all of my instructions as a whole. You must not single out or disregard any of the Court's instructions on the law.

The Indictment or formal charge against a defendant is not evidence of guilt. The law presumes every defendant is innocent. The Defendant does not have to prove his innocence or produce any evidence at all. The Government must prove guilt beyond a reasonable doubt. If it fails to do so, you must find the Defendant not guilty.

JURY INSTRUCTION NO. 3

The Government's burden of proof is heavy, but it does not have to prove the Defendant's guilt beyond all possible doubt. The Government's proof only has to exclude any "reasonable doubt" concerning the Defendant's guilt.

A "reasonable doubt" is a real doubt, based on your reason and common sense after you have carefully and impartially considered all the evidence in the case.

"Proof beyond a reasonable doubt" is proof so convincing that you would be willing to rely and act on it without hesitation in the most important of your own affairs. If you are convinced that the Defendant has been proved guilty beyond a reasonable doubt, say so. If you are not convinced, say so.

JURY INSTRUCTION NO. 4

As I said before, you must consider only the evidence that I have admitted in the case. Evidence includes the testimony of witnesses and the exhibits admitted. But, anything the lawyers say is not evidence and is not binding on you.

You should not assume from anything I have said that I have any opinion about any factual issue in this case. Except for my instructions to you on the law, you should disregard anything I may have said during the trial in arriving at your own decision about the facts.

Your own recollection and interpretation of the evidence is what matters.

In considering the evidence you may use reasoning and common sense to make deductions and reach conclusions. You should not be concerned about whether the evidence is direct or circumstantial.

“Direct evidence” is the testimony of a person who asserts that he or she has actual knowledge of a fact, such as an eyewitness.

“Circumstantial evidence” is proof of a chain of facts and circumstances that tend to prove or disprove a fact. There is no legal difference in the weight you may give to either direct or circumstantial evidence.

JURY INSTRUCTION NO. 5

When I say you must consider all the evidence, I do not mean that you must accept all the evidence as true or accurate. You should decide whether you believe what each witness had to say, and how important that testimony was. In making that decision you may believe or disbelieve any witness, in whole or in part. The number of witnesses testifying concerning a particular point does not necessarily matter.

To decide whether you believe any witness I suggest that you ask yourself a few questions:

- Did the witness impress you as one who was telling the truth?
- Did the witness have any particular reason not to tell the truth?
- Did the witness have a personal interest in the outcome of the case?
- Did the witness seem to have a good memory?
- Did the witness have the opportunity and ability to accurately observe the things he or she testified about?
- Did the witness appear to understand the questions clearly and answer them directly?
- Did the witness's testimony differ from other testimony or other evidence?

JURY INSTRUCTION NO. 6

You should also ask yourself whether there was evidence that a witness testified falsely about an important fact. And ask whether there was evidence that at some other time a witness said or did something, or did not say or do something, that was different from the testimony the witness gave during this trial.

But keep in mind that a simple mistake does not mean a witness was not telling the truth as he or she remembers it. People naturally tend to forget some things or remember them inaccurately. So, if a witness misstated something, you must decide whether it was because of an innocent lapse in memory or an intentional deception. The significance of your decision may depend on whether the misstatement is about an important fact or about an unimportant detail.

A defendant has a right not to testify. But since the Defendant did testify, you should decide whether you believe the Defendant's testimony in the same way as that of any other witness.

JURY INSTRUCTION NO. 7

At this time, I will explain the Indictment, which charges Mr. Uces with one crime. You will be given a copy of the Indictment to refer to during your deliberations.

In this case, the government has charged Salih Zeki Uces with violating 18 U.S.C. § 1204, the International Parental Kidnapping Crime Act. This law makes it a federal crime to remove a child from the United States or to retain a child outside the United States with the intent to obstruct the lawful exercise of another person's parental rights. In this case, the Indictment charges that beginning on or about September 16, 2016, until on or about November 10, 2016, Salih Zeki Uces removed a child from the United States and retained a child outside of the United States with the intent to obstruct the lawful exercise of another person's parental rights in violation of the International Parental Kidnapping Crime Act. You may find the Defendant guilty of this offense if you find that, with the requisite intent, he either removed a child from the United States or retained a child outside the United States or both.

Mr. Uces can be found guilty of this offense only if the government proves, beyond a reasonable doubt, the following:

First, that the child was previously in the United States;

Second, that Salih Zeki Uces, either:

- a) knowingly took the child from the United States to another country; or
- b) beginning on or about September 16, 2016, until on or about November 10, 2016, knowingly retained the child outside the United States; and

Third, that Salih Zeki Uces, acted with the intent to obstruct the lawful exercise of another person's parental rights.

JURY INSTRUCTION NO. 8

The term "child" for purposes of this offense means a person who has not yet attained the age of 16 years.

JURY INSTRUCTION NO. 9

The term "parental rights," with respect to a child, means the right to physical custody of the child, whether joint or sole, and includes visiting rights. The right to physical custody or visitation can arise in three ways: by operation of law, by court order, or by a legally binding agreement.

You are instructed that the operation of Florida law generated the parental rights in this case. Florida law recognizes that a mother and father each possess a right to physical custody of their child, until such a time as a court of competent jurisdiction has ruled otherwise.

JURY INSTRUCTION NO. 10

The government must also prove beyond a reasonable doubt that the Defendant acted with the intent to obstruct the lawful exercise of parental rights as I have just defined those rights. The term "obstruct" means to hinder or impede. To find that the Defendant acted with the intent to obstruct the lawful exercise of parental rights, you must find that the Defendant acted deliberately with the purpose of interfering with the parental rights of the other parent. However, the government need not prove that the Defendant acted with the sole or principal intent of obstructing the lawful exercise of parental rights.

You are further instructed that neither the Defendant's ignorance of the law nor any mistake in his understanding of the law is a defense to this charge.

JURY INSTRUCTION NO. 11

You will see that the Indictment charges that a crime was committed "on or about" a certain date. The Government does not have to prove that the offense occurred on an exact date. The Government only has to prove beyond a reasonable doubt that the crime was committed on a date reasonably close to the date alleged.

The word "knowingly," as used in these instructions, means that an act was done voluntarily and intentionally and not because of a mistake or by accident. In this case, that would mean that the Defendant voluntarily and intentionally removed a child from the United States or retained the child, who had been in the United States, outside of the United States. The government need not prove that the Defendant knew he was violating a criminal law or that he intended to violate a criminal law by removing the child from, or retaining the child outside of, the United States.

JURY INSTRUCTION NO. 12

In making your determination in this case, you are not to concern yourselves with the future custody of the child. It is not your role or the role of this Court to decide what custody arrangement is or was in the best interest of the child. You also should not consider who you may believe to be the better parent of the child.

JURY INSTRUCTION NO. 13

I caution you that the Defendant is on trial only for the specific crime charged in the Indictment. You are here to determine from the evidence in this case whether the Defendant is guilty or not of that specific crime.

You must never consider punishment in any way to decide whether the Defendant is guilty or not guilty. If you find the Defendant guilty, the punishment is for the Judge alone to decide later.

JURY INSTRUCTION NO. 14

You have been permitted to take notes during the trial. Most of you — perhaps all of you — have taken advantage of that opportunity.

You must use your notes only as a memory aid during deliberations. You must not give your notes priority over your independent recollection of the evidence. And you must not allow yourself to be unduly influenced by the notes of other jurors.

I emphasize that notes are not entitled to any greater weight than your memories or impressions about the testimony.

JURY INSTRUCTION NO. 15

Your verdict, whether guilty or not guilty, must be unanimous — in other words, you must all agree. Your deliberations are secret, and you will never have to explain your verdict to anyone.

Each of you must decide the case for yourself, but only after fully considering the evidence with the other jurors. So you must discuss the case with one another and try to reach an agreement. While you are discussing the case, do not hesitate to reexamine your own opinion and change your mind if you become convinced that you were wrong. But do not give up your honest beliefs just because others think differently or because you simply want to get the case over with.

Remember that, in a very real way, you are judges — judges of the facts. Your only interest is to seek the truth from the evidence in the case.

JURY INSTRUCTION NO. 16

When you get to the jury room, choose one of your members to act as foreperson. The foreperson will direct your deliberations and will speak for you in court.

A verdict form has been prepared for your convenience.

[Explain verdict]

Take the verdict form with you to the jury room. When you have all agreed on the verdict, your foreperson must fill in the form, sign it, date it, and carry it. Then you will return it to the courtroom.

If you wish to communicate with me at any time, please write down your message or question and give it to the marshal. There will be envelopes in the jury room in which you should place your question. The marshal will bring it to me and I will respond as promptly as possible — either in writing or by talking to you in the courtroom. But I caution, however, in any note you may send, you should not tell me how many jurors have voted one way or the other at that time.