

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

Case No. 2:23-cr-7

v.

HON. ROBERT J. JONKER

NATHAN WEEDEN.

Defendant.

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ORDER

The Court has considered the arguments of the parties during the instruction conference this afternoon about a proposed instruction on Identification, the proposed government Supplemental Instruction on specific intent, and the government’s proposed change on “but for” causation in the Section 247(c) instruction. The Court advises the parties that it does not expect to give a specific instruction on Identification, and that it does not expect to incorporate the government’s proposed language on specific intent. As for the Section 247(c) instruction, the Court will not change “the ‘but for’ cause” to “a ‘but for’ cause,” but the Court will make a clarifying change to the Section 247(c) instruction. A copy of the revised Section 247(c) instruction that the Court plans to give is attached to this Order as Exhibit A. The Court incorporates its comments at the instruction conference regarding these issues and amplifies those comments here.

On the Identification issue, the Court adds that the general credibility instruction, the general instruction on testimony of an accomplice, and the general instruction on prior inconsistent

statements already cover the main issues the parties plan to address on this. Moreover, identification issues regarding the defendant's participation in The Base depend on a great deal of evidence in addition to specific identification testimony. And as to identification testimony regarding the defendant's participation in the Temple Jacob defacing, no one claims to have directly witnessed defendant engage in that activity. A standalone identification instruction is thus at best unnecessary, and at worst confusing.

On the "but for" causation issue, the Court sees strong parallels to cases involving charges of distribution of controlled substances resulting in death. In fact, one of the cases cited by the government, *Burrage v. United States*, is a drug case. 571 U.S. 204 (2014). This Court has previously addressed "but for" causation language in this context. *See Order, United States v. Assfy*, No. 1:19-cr-159 (W.D. Mich. Jan. 22, 2020), ECF No. 71. The Court anticipates using a parallel solution here, as reflected in attached Exhibit A.

The parties may further discuss this with the Court before the final charge to the jury, but the Court wanted to give the parties the earliest possible notice of its current intentions.

Dated: January 23, 2024

/s/ Robert J. Jonker
ROBERT J. JONKER
UNITED STATES DISTRICT JUDGE