

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 24-80103-CR-CANNON

UNITED STATES OF AMERICA

v.

DUSTIN SEAN McCABE,

Defendant.

JOINT PROPOSED SUPPLEMENTAL JURY INSTRUCTION

The United States of America and Defendant Dustin Sean McCabe, by and through their undersigned counsel (collectively, the “Parties”), respectfully submit this Joint Proposed Supplemental Jury Instruction to address the unavailability of J.M. as a witness, whom the Parties acknowledge to have asserted his Fifth Amendment rights. *See* DE 60 at 2.

PROPOSED JURY INSTRUCTION

The jury should draw no inference from [J.M.]’s absence from this trial because he was not available to either side.

ANNOTATIONS AND COMMENTS

Bowles v. United States, 439 F.2d 536, 542 (D.C. Cir. 1970) (“Had either counsel requested the court to instruct the jury that they should draw no inference from Smith's absence because he was not available to either side, it would have been error to refuse this instruction.”).

CONCLUSION

Based on the foregoing authority and the Parties’ agreement that J.M.’s name has been used throughout the trial, the Parties respectfully submit that the Court should issue the proposed instruction contained herein.

Dated: February 25, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on February 25, 2025, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF.

/s/ Zachary A. Keller
ZACHARY A. KELLER
Assistant United States Attorney