

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON

UNITED STATES OF AMERICA

v.

CRIMINAL NO. 2:24-CR-00192

KISHA SUTTON - 1
SHAMIESE WRIGHT - 2

**GOVERNMENT'S MOTION IN LIMINE TO PRECLUDE
ARGUMENTS AND EVIDENCE ADVOCATING JURY NULLIFICATION**

Comes now the United States of America, by Jonathan T. Storage, Assistant United States Attorney for the Southern District of West Virginia, and submits this motion in limine to preclude certain arguments and evidence that would tend to invite jury nullification.

I. LAW REGARDING NULLIFICATION

"Nullification is, by definition, a violation of a juror's oath to apply the law as instructed by the court—in the words of the standard oath administered to jurors in the federal courts, to render a true verdict according to the law and the evidence." United States v. Thomas, 116 F.3d 606, 614 (2d Cir. 1997) (emphasis in original) (internal quotation marks omitted). As the Supreme Court pronounced over a century ago, "[p]ublic and private safety alike would be in peril if the principle be established that juries in criminal cases may, of right, disregard the law as expounded to

them by the court, and become a law unto themselves.” Sparf v. United States, 156 U.S. 51, 101 (1895). Although a jury has the power to ignore the court’s instructions, neither the Court nor the parties have the right to instruct the jury regarding its ability to disregard the law. See United States v. Moylan, 417 F.2d 1002, 1006-07 (4th Cir. 1969) (explaining that jury has “undisputed power . . . to acquit, even if its verdict is contrary to the law as given by the judge and contrary to the evidence” but holding that jury may not “be instructed that it may disregard the law as declared by the judge”). Therefore, it is proper for the Court to instruct a jury to take the law only from the Court’s instructions and not draw its own conclusions about the law. See Sparf, 156 U.S. at 102 (“Upon the court rests the responsibility of declaring the law; upon the jury, the responsibility of applying the law so declared to the facts as they, upon their conscience, believe them to be.”).

It follows that it is improper for a defendant to suggest to the jury that it should acquit him for reasons beyond the facts and the law according to the district court’s instructions. United States v. Muse, 83 F.3d 672, 677 (4th Cir. 1996) (“Although a jury is entitled to acquit on any ground, a defendant is not entitled to inform the jury that it can acquit him on grounds other than the facts in evidence.”); see also, e.g., United States v.

Perez, 86 F.3d 735, 736 (7th Cir. 1996) (“An unreasonable jury verdict . . . is lawless, and the defendant has no right to invite the jury to act lawlessly. Jury nullification . . . is not a right, either of the jury or of the defendant.”); Scarpa v. Dubois, 38 F.3d 1, 11 (1st Cir. 1994) (“[D]efense counsel may not press arguments for jury nullification in criminal cases.”); United States v. Trujillo, 714 F.2d 102, 106 (11th Cir. 1983) (“Appellant’s jury nullification argument would have encouraged the jurors to ignore the court’s instruction and apply the law at their caprice. While we recognize that a jury may render a verdict at odds with the evidence or the law, neither the court nor counsel should encourage jurors to violate their oath.”). Cf. United States v. Edwards, 101 F.3d 17, 19 (2d Cir. 1996) (holding that good motives do not invalidate defendant’s violation of law and jury should not be encouraged to consider such arguments).

In the same vein, a defendant may not offer evidence that would be otherwise inadmissible for the purpose of encouraging the jury to disregard the law and acquit the defendant. See United States v. Benson, 957 F.3d 218, 236–37 (4th Cir. 2020) (holding that district court did not abuse its discretion by giving curative instruction that dismissal on state charges was irrelevant and should not be considered by jury after defense counsel mentioned dismissal in closing argument); United States v. Peterson, 945

F.3d 144, 157 (4th Cir. 2019) (holding that district court properly excluded evidence about defendant's "lengthy state sentence" due to its "low probative value"). See also, e.g., Zal v. Steppe, 968 F.2d 924, 930 (9th Cir. 1992) (Trott, J., concurring) ("[N]either a defendant nor his attorney has a right to present to a jury evidence that is irrelevant to a legal defense to, or an element of, the crime charged." (emphases in original)); United States v. Gorham, 523 F.2d 1088, 1097-98 (D.C. Cir. 1975) (affirming trial court's refusal to admit evidence that bore no legal relation to charges but might encourage "conscience verdict" of acquittal); United States v. Lucero, 895 F. Supp. 1421, 1426 (D. Kan. 1995) ("[D]efendants are not entitled to present evidence which is irrelevant for any purpose other than to provoke the finder of fact to disregard the law.").

II. SPECIFIC AREAS OF EVIDENCE AND ARGUMENT TO BE EXCLUDED

A. Potential Penalties

The defendants, if convicted, will be exposed to a sentence of numerous years of imprisonment. The possibilities of what their ultimate sentences may be should not be presented to the jury during trial.

Sentencing considerations are irrelevant to the jury's determination of a defendant's guilt or innocence. See Rogers v. United States, 422 U.S. 35, 40 (1975) ("[T]he jury ha[s] no

sentencing function and should reach its verdict without regard to what sentence might be imposed."); United States v. Meredith, 824 F.2d 1418, 1429 (4th Cir. 1987) ("The jury must reach its verdict without considering possible sentences."); see also Fed. R. Evid. 401 (setting forth standard for relevance). As the Supreme Court explained in Shannon v. United States,

The principle that juries are not to consider the consequences of their verdicts is a reflection of the basic division of labor in our legal system between judge and jury. The jury's function is to find the facts and to decide whether, on those facts, the defendant is guilty of the crime charged. The judge, by contrast, imposes sentence on the defendant after the jury has arrived at a guilty verdict. Information regarding the consequences of a verdict is therefore irrelevant to the jury's task. Moreover, providing jurors sentencing information invites them to ponder matters that are not within their province, distracts them from their fact-finding responsibilities, and creates a strong possibility of confusion.

512 U.S. 573, 579 (1994).

Put simply, arguments about the penalties a defendant faces or has faced are a "self-evident invitation to jury nullification." United States v. Peterson, 945 F.3d 144, 157 (4th Cir. 2019). A defendant's suggestion to the jury, whether implicit or explicit, that it should acquit him based on the sentence he faces, even if it finds the evidence sufficient to prove his guilt beyond a reasonable doubt, plainly runs afoul of the well-established principle that the jury's verdict should be based only on the

evidence and the law as instructed by the court. Therefore, the United States respectfully requests that the Court prevent the defendants in this case from presenting arguments and evidence relating to the potential penalties to which they are exposed if convicted of the crimes charged in the Second Superseding Indictment.

B. Nursing Education Programs / Nursing Licensure

The government understands that defendant Shamiese Wright is seven months into a nursing program. She is expected to complete the program in five months, and she plans to enroll in a two-year registered nurse ("RN") program at Trocare College. The government understands from communications with counsel that defendant Shamiese Wright is very concerned about what a felony conviction will do to her prospects of become an RN.

Matters relating to the defendants' course of study, their future career plans, and the potential harm a felony conviction would do to their plans are irrelevant to whether or not they committed the crimes alleged, and introducing such facts to the jury would invite jury nullification. For this reason, government requests that the Court preclude defendants from introducing evidence or argument about their current training, career goals, and the effect a felony conviction may have on those matters.

C. Child / Family Care / Financial Responsibilities

As is the case with many defendants, defendants Kisha Sutton and Shamiese Wright very likely have family and financial responsibilities at home. But the defendants' person circumstances at home are irrelevant to the matters at issue, and the introduction of such personal matters would only invite jury nullification. For these reasons, the Court should exclude any evidence or argument about the defendants' home, family, or financial responsibilities.

D. Medical Diagnoses / Physical & Emotional Disabilities

To the extent that the defendants are afflicted by one or more physical or emotional disabilities, disorders, traumas, pain, etc., the defendants should be precluded from introducing any evidence or argument about such afflictions. Introducing evidence and argument about irrelevant pain and suffering from some medical, physical, or emotional trauma would invite jury nullification and should be excluded. To the extent that any such afflictions are apparent through casual observations, the defendants should be precluded from emphasizing the afflictions in front of the jury.

III. CONCLUSION

For these reasons, the government requests that the Court enter an order precluding the defendants from introducing evidence and arguments relating to certain subject matter that would invite

jurors to abandon their oaths and acquit the defendant for reasons unrelated to the relevant law and facts of the case. The Court should preclude evidence and argument relating to (A) the potential criminal penalties the defendants may face upon conviction; (B) the effect any criminal conviction would have on current training, career, or professional licensure prospects; (C) the family and financial responsibilities the defendants may have at home; and (D) any medical, physical, or emotional afflictions they may have.

Respectfully submitted,

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CERTIFICATE OF SERVICE

It is hereby certified that the foregoing "GOVERNMENT'S MOTION IN LIMINE TO PRECLUDE ARGUMENTS AND EVIDENCE ADVOCATING JURY NULLIFICATION" has been electronically filed and service has been made on opposing counsel by virtue of electronic mail this the 23rd day of June, 2025, to:

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