

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

UNITED STATES OF AMERICA)
)
v.)
)
)
)

NO.
JUDGE CAMPBELL

JURY CHARGE

TABLE OF CONTENTS

I. INTRODUCTION	1
II. DUTIES AND GENERAL RULES	2
1. <u>Jurors' Duties</u>	2
2. <u>Presumption of Innocence and Burden of Proof</u>	2
3. <u>Criminal Standard - Beyond A Reasonable Doubt</u>	3
4. <u>Consideration Of Various Types Of Evidence</u>	3
5. <u>Direct and Circumstantial Evidence</u>	5
6. <u>Credibility Of Witnesses</u>	6
7. <u>No Burden Or Duty Upon Criminal Defendant</u>	7
III. <u>ELEMENTS OF THE CRIMES ALLEGED</u>	9
1. <u>Indictment</u>	9
2. [Elements of the Offenses Charged]	9
IV. ADDITIONAL RULES	10
1. <u>Separate Consideration</u>	10
2. <u>Inferring Required Mental State</u>	10
3. <u>Other Persons</u>	11
4. <u>Impeachment By Prior Inconsistent Statement Not Under Oath</u>	11
5. <u>Testimony Of Government Employees</u>	11
6. <u>Expert Witness</u>	11
7. <u>Evidence Admitted For Limited Purpose Only</u>	12
8. <u>Dates In Indictment</u>	12
9. <u>Punishment</u>	12
10. <u>Sympathy And Hostility</u>	13
11. <u>Experiments, Research and Investigation</u>	13
12. <u>Juror Notes</u>	13
13. <u>Court Has No Opinion</u>	14
VI. DELIBERATIONS AND VERDICT	15

I. INTRODUCTION

Members of the jury, now it is time for me to instruct you about the law that you must follow in deciding this case.

I will start by explaining your duties and the general rules that apply in every criminal case.

Then I will explain the elements, or parts, of the crimes that the Defendant is accused of committing.

Then I will explain some rules that you must use in evaluating particular testimony and evidence.

And last, I will explain some rules that you must follow during your deliberations in the jury room, and the possible verdicts that you may return.

If there are any discrepancies between what I told you in the preliminary instructions and what I am about to tell you now, you are to follow what I am about to tell you now.

Please listen very carefully to everything I say.

II. DUTIES AND GENERAL RULES

1. Jurors' Duties

You have two main duties as jurors. The first one is to decide what the facts are from the evidence that you saw and heard here in court. Deciding what the facts are is your job, not mine, and nothing that I have said or done during this trial was meant to influence your decision about the facts in any way.

Your second duty is to take the law that I give you, apply it to the facts which you find, and decide if the Government has proved the Defendant's guilt beyond a reasonable doubt. It is my job to instruct you about the law, and you are bound by the oath that you took at the beginning of the trial to follow the instructions that I give you, even if you personally disagree with them. This includes the instructions that I gave you before and during the trial and these instructions. All the instructions are important, and you should consider them together as a whole.

The lawyers have talked about the law during their arguments. But if what they said is different from what I say, you must follow what I say. What I say about the law controls.

Perform these duties fairly. Do not let any bias, sympathy or prejudice that you may feel toward one side or the other influence your decision in any way.

2. Presumption of Innocence and Burden of Proof

As you know, the Defendant in this case has pled not guilty to the crimes charged in the Indictment. The Indictment is not any evidence at all of guilt. It is just the formal way that the Government tells the Defendant what crimes he is accused of committing. It does not even raise any suspicion of guilt.

Instead, the Defendant starts the trial with a clean slate, with no evidence at all against him, and the law presumes that he is innocent. This presumption of innocence stays with the Defendant unless the Government presents evidence here in court that overcomes the presumption, and convinces you beyond a reasonable doubt that he is guilty.

This means that the Defendant has no obligation to present any evidence at all, or to prove to you in any way that he is innocent. It is up to the Government to prove that the Defendant is guilty, and this burden stays on the Government from start to finish. You must find the Defendant not guilty unless the Government convinces you beyond a reasonable doubt that he is guilty.

3. Criminal Standard - Beyond A Reasonable Doubt

The Government must prove every element of the crimes charged beyond a reasonable doubt. Proof beyond a reasonable doubt does not mean proof beyond all possible doubt. Possible doubts or doubts based purely on speculation are not reasonable doubts. A reasonable doubt is a doubt based on reason and common sense. It may arise from the evidence, the lack of evidence, or the nature of the evidence.

Proof beyond a reasonable doubt means proof which is so convincing that you would not hesitate to rely and act upon it in making the most important decisions in your lives. If you are convinced that the Government has proved the Defendant guilty beyond a reasonable doubt, say so by returning a guilty verdict against the Defendant.

If you are not convinced, say so by returning a verdict of not guilty.

4. Consideration Of Various Types Of Evidence

I caution you, however, that you are here to determine your verdict only from the evidence presented in this case. The Defendant is not on trial for any act, conduct, or offense not alleged in the Indictment. Neither are you called upon to return a verdict as to the guilt of any other person or persons not on trial in this case.

As stated earlier, it is your duty to determine the facts, and in so doing you must consider only the evidence I have admitted in the case. The term "evidence" includes the sworn testimony of the witnesses and the exhibits admitted in the record.

Remember that any statements, objections, or arguments made by the lawyers are not evidence in the case. The function of the lawyers is to point out those things that are most significant or most helpful to their side of the case, and in so doing, to call your attention to certain facts or inferences that might otherwise escape your notice. In the final analysis, however, it is your own recollection and interpretation of the evidence that controls in the case. What the lawyers say is not binding upon you. Also, during the course of a trial I occasionally make comments to the lawyers, or ask questions of a witness, or admonish a witness concerning the manner in which he or she should respond to the questions of counsel. Do not assume from anything I may have said that I have any opinion concerning any of the issues 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 findings as to the facts.

You have seen the lawyers for the parties to this action object from time to time during the presentation of the evidence. Do not hold that against any of the parties. The lawyers have a duty to object whenever they think that something is not permitted by the rules of evidence. Those rules are designed to make sure that both sides receive a fair trial. Likewise, do not

interpret my rulings on any of the lawyers' objections as any indication of how I think the case should be decided. My rulings were based upon the rules of evidence, not on how I feel about the case.

Remember at all times that your decision must be based only on the evidence that you saw and heard here in Court. You are permitted to draw such reasonable inferences from the testimony and exhibits as you think are justified in the light of common experience. In other words, you may make deductions and reach conclusions which reason and common sense lead you to draw from the facts which have been established by the evidence in the case.

5. Direct and Circumstantial Evidence

Evidence may be either direct or circumstantial. "Direct evidence" is the testimony of one who asserts actual knowledge of a fact, such as an eyewitness, which directly proves a fact if you believe that witness. If a witness testified that he saw it raining outside, and you believed him, that would be direct evidence that it was raining.

"Circumstantial evidence" is simply a chain of circumstances that indirectly proves a fact. If someone walked into the courtroom wearing a raincoat covered with drops of water and carrying a wet umbrella, that would be circumstantial evidence from which you could conclude that it was raining.

It is your job to decide how much weight to give the direct and circumstantial evidence. The law makes no distinction between the weight to be given to either direct or circumstantial evidence. You should consider all the evidence, both direct and circumstantial, and give it whatever weight you believe it deserves.

6. Credibility Of Witnesses

I have said that you must consider all of the evidence. This does not mean, however, that you must accept all of the evidence as true or accurate. You are the sole judges of the "credibility" or "believability" of each witness and the weight to be given to the witness's testimony. In weighing the testimony of a witness you should consider the witness's relationship to the Government or the Defendant; the witness's interest, if any, in the outcome of the case; the witness's manner of testifying; the witness's opportunity to observe or acquire knowledge concerning the facts about which the witness testified; the witness's candor, fairness, and intelligence; and the extent to which the witness has been supported or contradicted by other credible evidence. You may, in short, accept or reject the testimony of any witness in whole or in part.

Inconsistencies or discrepancies in the testimony of a witness, or between the testimony of different witnesses, may or may not cause the jury to discredit such testimony. Two or more persons witnessing an incident or a transaction may see or hear it differently; an innocent misrecollection, like failure of recollection, is not an uncommon experience. In weighing the effect of a discrepancy, always consider whether it pertains to a matter of importance or an unimportant detail, and whether the discrepancy results from innocent error or intentional falsehood.

Also, the weight of the evidence is not necessarily determined by the number of witnesses testifying as to the existence or non-existence of any fact. You may find that the testimony of a smaller number of witnesses as to any fact is more credible than the testimony of a larger number of witnesses to the contrary.

A witness may be discredited or "impeached" by contradictory evidence, by a showing that the witness testified falsely concerning a material matter, or by evidence that at some other time the witness has said or done something, or has failed to say or do something, which is inconsistent with the witness' present testimony. If you believe that any witness has been so impeached, then it is your exclusive province to give the testimony of that witness such credibility or weight, if any, as you may think it deserves.

You are not required to accept testimony, even though the testimony is uncontradicted and the witness is not impeached. You may decide, because of the witness's bearing and demeanor, or because of the inherent improbability of the testimony, or for other reasons sufficient to you, that such testimony is not worthy of belief. On the other hand, the Government is not required to prove the essential elements of the offense as defined in these instructions by any particular number of witnesses. The testimony of a single witness may be sufficient to convince you beyond a reasonable doubt of the existence of an essential element of the offense charged, if you believe that the witness has truthfully and accurately related what, in fact, occurred.

7. No Burden Or Duty Upon Criminal Defendant

The jury must always bear in mind that the law never imposes on a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence. A defendant has a right not to testify or present any evidence. The law does not compel a defendant in a criminal case to take the witness stand and testify or to present any evidence, and no presumption of guilt may be raised and no inference of any kind may be drawn based upon whether or not a defendant has testified or presented any evidence. In other words, whether or

not the Defendant has testified or presented any evidence may not be taken as a confession of guilt and should not prejudice the case in the minds of the jury in any manner.

This ends the explanation of your duties and the general rules that apply to criminal cases.

I will now explain the elements, or parts, of the crimes that the Defendant is accused of committing.

III. ELEMENTS OF THE CRIMES ALLEGED

1. Indictment

You have been given a copy of the Indictment, which I will now read.

2. [Elements of the Offenses Charged]

IV. ADDITIONAL RULES

I will now explain some rules that you must use in evaluating particular testimony and evidence.

1. Separate Consideration

The Defendant has been charged with more than one crime.

The number of charges is no evidence of guilt, and this should not influence your decision in any way. It is your duty to separately consider the evidence that relates to each charge, and to return a separate verdict for each one of them. For each charge, you must decide whether the Government has presented proof beyond a reasonable doubt that the Defendant is guilty of that particular charge.

Your decision on one charge, whether it is guilty or not guilty, should not influence your decision on any of the other charges.

2. Inferring Required Mental State

Ordinarily, there is no way that a Defendant's state of mind can be proved directly, because no one can read another person's mind and tell what that person is thinking.

But a Defendant's state of mind can be proved indirectly from the surrounding circumstances. This includes things like what the Defendant said, what the Defendant did, how the Defendant acted, and any other facts or circumstances in evidence that show what was in the Defendant's mind.

You may also consider the natural and probable results of any acts that the Defendant knowingly did or did not do, and whether it is reasonable to conclude that the Defendant intended those results.

3. Other Persons

The Defendant is only on trial for the particular crimes charged in the Indictment. Your job is limited to deciding whether the Government has proved the crimes charged beyond a reasonable doubt. Whether anyone else should be prosecuted and convicted for those crimes is not a proper matter for you to consider. The possible guilt of others is no defense to a criminal charge. Your job is to decide if the Government has proved this Defendant guilty.

4. Impeachment By Prior Inconsistent Statement Not Under Oath

You have heard the testimony of certain witnesses who, before this trial, may have made statements that may be different from their testimony here in court.

These earlier statements were brought to your attention as one way of helping you decide how believable their testimony was. Do not use them for any other purpose. They are not evidence of anything else.

5. Testimony Of Government Employees

People employed by the federal, state, or local Government, including law enforcement officers, do not stand in any higher or lower station in the community than other persons, and their testimony is not entitled to any greater or lesser weight. You should recall their demeanor on the stand, their manner of testifying, the substance of their testimony, and weigh and balance it just as carefully as you would the testimony of any other witness.

6. Expert Witness

An expert witness is one who possesses special or technical knowledge or skill upon the subject about which the expert testifies, that is, upon a subject with which ordinary men or women are not familiar. An expert differs from the ordinary witness in that the expert is

permitted to express opinions as to the results of proven facts, although this witness may also testify as to facts themselves, as any other witness.

Expert opinions are not to be accepted as facts. Those opinions should be carefully weighed by the jury, with regard to the expert's training, experience, and sources of knowledge, as well as with regard to the expert's prejudices, if any appear.

7. Evidence Admitted For Limited Purpose Only

In certain instances, evidence may be admitted only for a particular purpose and not generally for all purposes.

For the limited purpose for which any evidence has been received you may give it such weight as you feel it deserves. You may not, however, use such evidence for any other purpose not specifically mentioned.

8. Dates In Indictment

You will note that the Indictment charges that the offenses were committed "on or about" a certain date. The proof need not establish with certainty the exact date of the alleged offense. It is sufficient if the evidence in the case establishes beyond a reasonable doubt that the offense was committed on a date reasonably near the date alleged.

9. Punishment

The punishment provided by law for the offense charged in the Indictment is a matter exclusively within the province of the Court, and should not be considered by you in any way in arriving at an impartial verdict as to the guilt or innocence of the Defendant.

10. Sympathy And Hostility

I also instruct you that sympathy or hostility must not enter into your deliberation as jurors no matter what your sympathy or hostility may lead you to think. Sympathy or hostility has no place in the trial of a lawsuit, or in the making up of your minds as to what your verdict shall be. Do not permit any such emotional considerations to enter into your deliberations at all.

11. Experiments, Research and Investigation

Remember that you must make your decision based only on the evidence that you saw and heard here in Court. Do not try to gather any information about the case on your own while you are deliberating.

For example, do not conduct any experiments inside or outside the jury room; do not bring any books, like a dictionary, or anything else with you to help you with your deliberations; do not conduct any independent research, reading or investigation about the case; and do not visit any of the places that were mentioned during the trial.

Make your decision based only on the evidence that you saw and heard here in Court.

12. Juror Notes

Remember that if you elected to take notes during the trial, your notes should be used only as memory aids. You should not give your notes greater weight than your independent recollection of the evidence. You should rely upon your own independent recollection of the evidence or lack of evidence and you should not be unduly influenced by the notes of other jurors. Notes are not entitled to any more weight than the memory or impression of each juror.

Whether you took notes or not, each of you must form and express your own opinion as to the facts of the case.

13. Court Has No Opinion

Let me finish up by repeating something that I said to you earlier. Nothing that I have said or done during this trial was meant to influence your decision in any way. You decide for yourselves if the Government has proved the Defendant guilty beyond a reasonable doubt.

VI. DELIBERATIONS AND VERDICT

I will now explain the rules that you must follow during your deliberations in the jury room and the possible verdicts that you may return.

Any verdict must represent the considered judgment of each juror. In order to return a verdict, it is necessary that each juror agree to the conclusions reached therein. In other words, your verdict must be unanimous.

It is your duty as jurors to consult with one another, to listen to one another, and to deliberate in an effort to reach agreement if you can do so without harm to individual judgment. Each of you must decide the case for yourself, but only after an impartial consideration of the evidence in the case with your fellow jurors. In the course of your deliberations, do not hesitate to re-examine your own views and change your opinion if you are convinced it is erroneous. But do not surrender your honest conviction as to the weight or effect of the evidence solely because of the opinion of your fellow jurors, or for the mere purpose of returning a verdict.

Remember at all times, you are not partisans, and you are not advocates. Your sole interest is to seek the truth from the evidence in the case.

Upon retiring to the jury room you should first select one of your number to act as your foreperson who will preside over your deliberations and will speak for you here in court. A verdict form has been prepared for your use.

When you have reached unanimous agreement as to your verdict, you must have your foreperson fill in the verdict form, date and sign it, and then return to the courtroom.

If, during your deliberations, you should desire to communicate with the Court, you must put your message or question in writing signed by the foreperson, and pass the note to the court

officer who will bring it to my attention. I will then respond as promptly as possible, either in writing or by having you return to the courtroom so that I can address you orally. I instruct you, however, with regard to any message or question you might send, that you must never state or specify the vote of the jury at the time.

I will now read the verdict form to you.

You may now begin your deliberations.

Thank you.