in the UNITED STATES DISTRICT COURT

DISTRICT OF UTAH, CENTRAL DIVISION

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| |  | | --- | | UNITED STATES OF AMERICA,  Plaintiffs, | | | Case No. |
| vs. |  | Judge David Sam |
| , | |
| |  |  | | --- | --- | | Defendant, | ts. | | |
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JURY INSTRUCTIONS

INSTRUCTION NO.

MEMBERS OF THE JURY: Now that you have heard the evidence and the argument of counsel, it becomes my duty to instruct you on the law that applies to this case.

It is your duty as jurors to follow the law as stated in these instructions of the court, and to apply the rules of law, so given, to the facts as you find them from the evidence in the case. You are the sole judges of the facts.

You should construe each instruction in the light of and in harmony with the other instructions and you should apply the instructions as a whole to the evidence. The order in which the instructions are given has no significance and is no indication of their relative importance.

INSTRUCTION NO.

You have been chosen and sworn as jurors in this case to try the issues of fact presented by the allegations of the indictment and the denial made by the "Not Guilty" plea of the accused. You are to perform this duty without bias or prejudice as to any party. The law does not permit jurors to be governed by sympathy, prejudice, or public opinion. Both the accused and the public expect that you will carefully and impartially consider all the evidence in the case, follow the law as stated by the court, and reach a just verdict regardless of the consequences.

INSTRUCTION NO.

The law presumes a defendant to be innocent of crime. Thus, a defendant, although accused, begins the trial with a "clean slate"--with no evidence against him. And the law permits nothing but legal evidence presented before the jury to be considered in support of any charge against the accused. So the presumption of innocence alone is sufficient to acquit a defendant, unless the jurors are satisfied beyond a reasonable doubt of the defendant's guilt after careful and impartial consideration of all the evidence in the case.

It is not required that the government prove guilt beyond all possible doubt. The test is one of reasonable doubt. A reasonable doubt is a doubt based upon reason and common sense--the kind of doubt that would make a reasonable person hesitate to act. Proof beyond a reasonable doubt must, therefore, be proof of such a convincing character that a reasonable person would not hesitate to rely and act upon it in the most important of his own affairs.

The jury will remember that a defendant is never to be convicted on mere suspicion or conjecture.

The burden is always upon the prosecution to prove guilt beyond a reasonable doubt. This burden never shifts to a defen­dant; for the law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence.

So, if the jury, after careful and impartial consideration of all the evidence in the case, has a reasonable doubt that a defendant is guilty of the charge, it must acquit. If the jury views the evidence in the case as reasonably permitting either of two conclusions--one of innocence, the other of guilt--the jury should, of course, adopt the conclusion of innocence.

INSTRUCTION NO.

You, as jurors, are the sole judges of the credibility of the witnesses and the weight their testimony deserves.

You should carefully scrutinize all the testimony given, the circumstances under which each witness has testified, and every matter in evidence which tends to show whether a witness is worthy of belief.

In weighing the testimony of a witness you should consider the person’s relationship to the government or the defendant; the individual’s interest, if any, in the outcome of the case; the manner of testifying; the opportunity to observe or acquire knowledge concerning the facts about which the individual testified; the person’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.

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.

You may also consider any demonstrated bias, prejudice or hostility of a witness in determining the weight to be accorded to his testimony.

INSTRUCTION NO.

The punishment provided by law for the offense charged in the indictment is a matter exclusively within the province of the court, and should never be considered by the jury in any way in arriving at an impartial verdict as to the guilt or innocence of the accused.

INSTRUCTION NO.

Your verdict must be based solely on the evidence and on the law as I have given it to you in these instructions. However, nothing that I have said or done is intended to suggest what your verdict should be--that is entirely for you to decide.

As stated, the arguments and statements of the attorneys are not evidence. If you remember the facts differently from the way the attorneys have stated them, you should base your decision on what you remember.

Some of you have taken notes during the trial. Such notes are only for the personal use of the person who took them.

INSTRUCTION NO.

It is proper to add the caution that nothing said in these instructions--and nothing in any form of verdict prepared for your convenience--is to suggest or to convey in any way or manner any intimation as to what verdict I think you should find. What the verdict shall be is the sole and exclusive duty and responsibility of the jury.

Upon retiring to the jury room, you will select one of your number to act as your foreperson. The foreperson will preside over your deliberations, and will be your spokesperson here in court.

A form of verdict has been prepared for your convenience.

(Read form of verdict)

You will take this form to the jury room, and when you have reached a unanimous agreement as to your verdict, you will have your foreperson fill in, date and sign the form to state the verdict upon which you unanimously agree, and then return with your verdict to the courtroom.

INSTRUCTION NO.

If it becomes necessary during your deliberations to communi­cate with the court, you may send a note by a marshal, signed by your foreperson, or by one or more members of the jury. No member of the jury should attempt to communicate with the court by any means other than a signed writing; and the court will never communicate with any member of the jury on any subject touching the merits of the case, other than in writing, or orally here in open court.

You will note from the oath about to be taken by the marshals that they, too, as well as other persons, are forbidden to communicate in any way or manner with any member of the jury on any subject touching the merits of the case.

Bear in mind, also, that you are never to reveal to any person--not even to the court--how the jury stands numerically or otherwise, until you have reached a unanimous verdict.

INSTRUCTION NO.

You may also consider either direct or circumstantial evidence. "Direct evidence" is the testimony of one who asserts actual knowledge of a fact, such as an eyewitness. "Circumstan­tial evidence" is proof of a chain of facts and circumstances indicating either the guilt or innocence of the defendant. The law makes no distinction between the weight to be given to either direct or circumstantial evidence. It requires only that you weigh all of the evidence and be convinced of the defendant's guilt beyond a reasonable doubt before he can be convicted.

INSTRUCTION NO.

The defendant asserts as a defense that he was entrapped into committing the offense charged in the indictment.

Where a person has no previous intent or purpose to violate the law, but is induced or persuaded by law enforcement officers or their agents to commit a crime, entrapment occurs, and the law, as a matter of policy, forbids his conviction in such a case.

On the other hand, where a person already had the readiness and willingness to break the law, the mere fact that government agents provide what appears to be a favorable opportunity is not entrapment.

If then the jury should find beyond a reasonable doubt from the evidence in the case that before anything at all occurred respecting the alleged offense involved in this case, the defendant was ready and willing to commit crimes such as are charged in the indictment, whenever opportunity was afforded, and that government officers or their agents did no more than offer the opportunity, then the jury should find the defendant was not entrapped.

On the other hand, if the evidence in the case leaves you with a reasonable doubt as to whether the defendant had a previous intent or purpose to commit an offense of the character charged, apart from the inducement or persuasion of some officer or agent of the government, then it is your duty to find him not guilty.

INSTRUCTION NO. \_\_\_\_\_\_

The government has offered evidence tending to show that on a different occasion the defendant engaged in conduct similar to the charges in the indictment.

In that connection, let me remind you that the defendant is not on trial for committing any act or acts not alleged in the indictment. Accordingly, you may not consider this evidence of the similar act or acts as a substitute for proof that the defendant committed the crime charged. Nor may you consider this evidence as proof that the defendant has a criminal personality or bad character. The evidence of the other similar act or acts was admitted for a much more limited purpose and you may consider it only for that limited purpose.

If you determine that the defendant committed the acts charged in the indictment and the similar acts as well, then you may, but you need not, draw an inference that, in doing the acts charged in the indictment, the defendant acted knowingly and intentionally and not because of some mistake, accident or other innocent reasons.

Evidence of similar acts may not be considered by you for any other purpose. Specifically, you may not use this evidence to conclude that because the defendant committed the other act or acts he must also have committed the acts charged in the indictment.

INSTRUCTION NO.

The law does not compel a defendant in a criminal case to take the witness stand and testify, and no presumption of guilt may be raised, and no inference of any kind may be drawn, from the failure of a defendant to testify.

As stated before, the law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence.

INSTRUCTION NO.

If a defendant wishes to testify, he or she is a competent witness; and the defendant's testimony is to be judged in the same way as that of any other witness.

INSTRUCTION NO.

The Constitution of the United States gives the defendant the absolute right to decide not to testify and to require the government to prove its case. You must ignore a defendant’s decision not to testify when you decide whether the defendant is guilty or not guilty. A defendant is presumed innocent; the defendant need not prove innocence. It is the government that must prove guilt.

INSTRUCTION NO.

At times throughout the trial, the court may have been called to rule whether or not certain offered evidence might be admitted. Whether offered evidence is admissable is purely a question of law. Neither the weight of the evidence nor the credibility of the witness is involved in such rulings. You are not to consider evidence offered but not received nor any evidence stricken out by the court.

Any ruling made by me should not be considered by you as indicating my view on any issue in this case. Any belief you may have as to what my view may be should receive no consideration by you in your deliberation.

INSTRUCTION NO.

Where a defendant has offered evidence of good reputation for

truth and veracity, or honesty and integrity, or as a law-abiding citizen, the jury should consider such evidence along with all the other evidence in the case.

Evidence that a defendant's reputation for truth and veracity, or honesty and integrity, or as a law-abiding citizen, has not been discussed, or that those traits of the defendant's character have not been questioned, may be sufficient to warrant an inference of good reputation as to those traits of character.

Evidence of a defendant's reputation, inconsistent with those traits of character ordinarily involved in the commission of the crime charged may give rise to a reasonable doubt, since the jury may think it improbable that a person of good character in respect to those traits would commit such a crime.

The jury will always bear in mind that the law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence.

INSTRUCTION NO.

The law presumes a defendant to be innocent of the crime. Thus a defendant begins with a clean slate; and, the law permits nothing but legal evidence presented to the jury to convict the defendant. So the presumption of innocence is sufficient to acquit a defendant, unless the jurors are satisfied beyond a reasonable doubt of the defendant's guilt after careful and impartial consideration of all evidence in the case.

INSTRUCTION NO.

There is nothing peculiar or different in the way a jury should consider the evidence in a criminal case from that in which all reasonable persons treat any questions depending upon evidence presented to you. You are expected to use your good common sense, consider the evidence in the case for only those purposes for which it has been admitted, and give it a reasonable and fair construc­tion, in light of your common knowledge of the natural tendencies and inclination of human beings.

Keep constantly in mind that it would be a violation of your sworn duty to base a verdict of guilty upon anything other than the evidence in the case.

Remember also that the question before you can never be: Will the prosecution win or lose the case? The prosecution always wins when justice is done, regardless of whether the verdict be guilty or not guilty.

INSTRUCTION NO.

It is your duty as jurors to consult with one another and to deliberate with a view of reaching an agreement if you can do so without violence to your individual judgment. You each must decide the case for yourself but should do so only after a consideration of the case with your fellow jurors. You should not hesitate to change an opinion when convinced that it is erroneous. However, you should not surrender your honest convic­tions concerning the effect or weight of evidence for the mere purpose of returning a verdict or solely because of the opinion of the other jurors.

INSTRUCTION NO.

Upon returning 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 be your spokesperson here in court.

A form of verdict has been prepared for your convenience.

[Explain verdict]

You will take the verdict form to the jury room and when you have reached unanimous agreement as to your verdict, you will have your foreperson fill it in, date and sign it, and then return to the courtroom.

INSTRUCTION NO. \_\_\_\_\_

You have heard testimony from a witness who is referred to as an expert. An expert is allowed to express an opinion on those matters about which the witness has special knowledge and training. Expert testimony is presented to you on the theory that someone who is experienced in the field can assist you in understanding the evidence or in reaching an independent decision on the facts.

In weighing the experts’ testimony, you may consider the expert’s qualifications, opinions, and reasons for testifying, as well as all of the other considerations that ordinarily apply when you are deciding whether or not to believe a witness’ testimony. You may give the expert testimony whatever weight, if any, you find it deserves in light of all the evidence in this case. You should not, however, accept this witness’ testimony merely because he is an expert. Nor should you substitute it for your own reason, judgment, and common sense. The determination of the facts in this case rests solely with you.