

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

FILED IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

SUSAN OKI MOLLWAY
United States District Judge

MAR 13 2001
at 9 o'clock and 58 min. a M
WALTER A.Y.H. CHINN, CLERK

GENERAL FEDERAL JURY
INSTRUCTIONS IN CRIMINAL CASES

The following will be proposed as the court's instructions in all criminal cases. Additional instructions applicable to the particular case may be prepared and proposed by the parties. Such additional instructions are to be exchanged between the parties and submitted in conformity with the Local Rules, the Pretrial Order, and this court's Procedures for Trials Before Judge Susan Oki Mollway.

GENERAL FEDERAL JURY
INSTRUCTIONS IN CRIMINAL CASES

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COURT'S INSTRUCTION NO. 1(A)

DUTY OF JUDGE - BEFORE CLOSING ARGUMENTS

Members of the Jury:

You have now heard all of the evidence in the case and will hear the final arguments of the lawyers for the parties. It becomes my duty, therefore, to instruct you on the rules of law that you must follow and apply in arriving at your decision in the case.

In any jury trial there are, in effect, two judges. I am one of the judges; you, the jurors, are the other. It has been my duty to preside over the trial and to determine what testimony and evidence is relevant under the law for your consideration. It is now my duty to instruct you on the law applicable to the case.

COURT'S INSTRUCTION NO. 1(B)

DUTY OF JUDGE - AFTER CLOSING ARGUMENTS

Members of the Jury:

You have now heard all of the evidence in the case as well as the final arguments of the lawyers for the parties. It becomes my duty, therefore, to instruct you on the rules of law that you must follow and apply in arriving at your decision in the case.

In any jury trial there are, in effect, two judges. I am one of the judges; you, the jurors, are the other. It has been my duty to preside over the trial and to determine what testimony and evidence is relevant under the law for your consideration. It is now my duty to instruct you on the law applicable to the case.

COURT'S INSTRUCTION NO. 2(A)

DUTY TO FOLLOW INSTRUCTIONS – SINGLE DEFENDANT

You, as jurors, are the judges of the facts. But in determining what happened in this case – that is, in reaching your decision as to the facts– it is your sworn duty to follow the law I am now defining for you.

You must follow all of my instructions as a whole. You have no right to disregard or give special attention to any one instruction, or to question the wisdom or correctness of any rule I may state to you. That is, you must not substitute or follow your own notion or opinion as to what the law is or ought to be. It is your duty to apply the law as I give it to you, regardless of the consequences.

It is also your duty to base your verdict solely upon the testimony and evidence in the case, without sympathy, bias, or prejudice. That was the promise you made and the oath you took before being accepted by the parties as jurors in this case, and they have the right to expect nothing less.

COURT'S INSTRUCTION NO. 2(B)

DUTY TO FOLLOW INSTRUCTIONS – MULTIPLE DEFENDANTS

You, as jurors, are the judges of the facts. But in determining what actually happened in this case – that is, in reaching your decision as to the facts – it is your sworn duty to follow the law I am now in the process of defining for you. Unless otherwise stated, you should apply each instruction separately and individually to each defendant on trial.

You must follow all of my instructions as a whole. You have no right to disregard or give special attention to any one instruction, or to question the wisdom or correctness of any rule I may state to you. That is, you must not substitute or follow your own notion or opinion as to what the law is or ought to be. It is your duty to apply the law as I give it to you, regardless of the consequences.

It is also your duty to base your verdict solely upon the testimony and evidence in the case, without sympathy, bias, or prejudice. That was the promise you made and the oath you took before being accepted by the parties as jurors in this case, and they have the right to expect nothing less.

COURT'S INSTRUCTION NO. 3

REASONABLE DOUBT

The indictment or formal charge against a defendant is not evidence of guilt. Indeed, the defendant is presumed to be innocent and does not have to present any evidence to prove innocence. The government has the burden of proving every element of the charge beyond a reasonable doubt. If it fails to do so, you must return a verdict of not guilty.

While the government's burden of proof is a strict or heavy burden, it is not necessary that the defendant's guilt be proved beyond all possible doubt. It is only required that the government's proof exclude any "reasonable doubt" concerning the defendant's guilt.

A reasonable doubt is a doubt based upon reason and common sense and may arise from a careful and impartial consideration of all the evidence, or from lack of evidence. Proof beyond a reasonable doubt is proof that leaves you firmly convinced that the defendant is guilty.

If, after a careful and impartial consideration with the other jurors of all the evidence, you are not convinced beyond a reasonable doubt that the

defendant is guilty, it is your duty to find the defendant not guilty. On the other hand, if, after a careful and impartial consideration with the other jurors of all the evidence, you are convinced beyond a reasonable doubt that the defendant is guilty, it is your duty to find the defendant guilty.

COURT'S INSTRUCTION NO. 4

DEFENDANT'S DECISION NOT TO TESTIFY

The law does not compel a defendant in a criminal case to testify. No presumption of guilt may be raised, and no inference of any kind may be drawn, from the fact that the defendant did not testify.

COURT'S INSTRUCTION NO. 5

EVIDENCE – EXCLUDING ARGUMENT OF COUNSEL
(Adjust If There Are No Stipulations)

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 (1) the sworn testimony of the witnesses, (2) the exhibits admitted in the record, and (3) any facts or testimony to which the parties have agreed and stipulated.

Remember that any statements, objections, or arguments made by the lawyers are not evidence in the case. The function of each lawyer is to point out those things that are most significant or most helpful to that lawyer's 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.

COURT'S INSTRUCTION NO. 6

EVIDENCE – OBJECTIONS

There are rules of evidence that control what can be received into evidence. When a lawyer asks a question or offers an exhibit into evidence and a lawyer on the other side thinks that it is not permitted by the rules of evidence, that lawyer may object. If I overrule the objection, the question may be answered or the exhibit received. If I sustain the objection, the question cannot be answered or the exhibit cannot be received, and you must not speculate as to what the answer might have been or what the exhibit might have shown. Nor should you speculate as to the reason for any objection. You must not consider for any purpose any offer of evidence that was rejected, or any evidence that was stricken from the record; such matter is to be treated as though you had never known of it.

COURT'S INSTRUCTION NO. 7

EVIDENCE – EXCLUDING STATEMENTS OF JUDGE

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.

COURT'S INSTRUCTION NO. 8

EVIDENCE – STIPULATION

The parties have agreed as to certain facts that have been stated to you. You should treat these facts as having been proved.

COURT'S INSTRUCTION NO. 9

EVIDENCE – DIRECT AND CIRCUMSTANTIAL

Evidence may be direct or circumstantial. Direct evidence is direct proof of a fact, such as testimony of an eyewitness. Circumstantial evidence is indirect evidence, that is, proof of a chain of facts from which you could find that another fact exists, even though it has not been proved directly.

While you should consider only the evidence in the case, you are permitted to draw such reasonable inferences from the testimony and exhibits as you feel are justified in the light of common experience. In other words, you may make deductions and reach conclusions that reason and common sense lead you to draw from the facts that have been established by the testimony and evidence in the case.

You are to consider both direct and circumstantial evidence. The law permits you to give equal weight to both, but it is for you to decide how much weight to give to any evidence.

COURT'S INSTRUCTION NO. 10

EVIDENCE – 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 his or her testimony. In weighing the testimony of a witness, you should consider the witness' relationship to the government or the defendant; the witness' interest, if any, in the outcome of the case; the witness' manner of testifying; the witness' opportunity to observe or acquire knowledge concerning the facts about which the witness testified; the witness' 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 nonexistence 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.

COURT'S INSTRUCTION NO. 11

EVIDENCE – EXPERT WITNESSES

The rules of evidence provide that, if scientific, technical, or other specialized knowledge might assist the jury in understanding the evidence or in determining a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify and state an opinion or opinions concerning such matters.

You should consider each expert opinion received in evidence in this case and give it such weight as you may think it deserves. If you decide that the opinion of an expert witness is not based upon sufficient education and/or experience, or if you conclude that the reasons given in support of the opinion are not sound, or that the opinion is outweighed by other evidence, then you may disregard the opinion entirely.

COURT'S INSTRUCTION NO. 12

IMPEACHMENT – GENERALLY

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 said or did something that is inconsistent with the witness' present testimony or failed to say or do something that would be consistent with the present testimony had it been said or done.

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.

COURT'S INSTRUCTION NO. 13

IMPEACHMENT – REPUTATION FOR TRUTHFULNESS

A witness may also be discredited or impeached by evidence that the general reputation of the witness for truth and veracity is bad in the community where the witness now resides or has recently resided.

COURT'S INSTRUCTION NO. 14
IMPEACHMENT – PRIOR CONVICTION

The fact that a witness has previously been convicted of a felony or of a crime involving dishonesty or false statement is also a factor you may consider in weighing the credibility of that witness. The fact of such a conviction does not necessarily destroy the witness' credibility, but it is one of the circumstances you may take into account in determining the weight to be given to the testimony.

COURT'S INSTRUCTION NO. 15(A)

IMPEACHMENT OF DEFENDANT – GENERAL INSTRUCTION

As stated earlier, a defendant has a right not to testify. If a defendant does testify, however, the defendant's testimony should be weighed and considered, and the defendant's credibility determined, in the same way as that of any other witness.

COURT'S INSTRUCTION NO. 15(B)

IMPEACHMENT OF DEFENDANT – GENERAL INSTRUCTION AND
PRIOR CONVICTION

As stated earlier, a defendant has a right not to testify. If a defendant does testify, however, the defendant's testimony should be weighed and considered, and the defendant's credibility determined, in the same way as that of any other witness. Evidence of a defendant's previous conviction of a crime is to be considered by you only insofar as it may affect the credibility of the defendant as a witness and must never be considered as evidence of guilt of the crime for which the defendant is on trial.

COURT'S INSTRUCTION NO. 16

ON OR ABOUT

You will note that the indictment charges that the offense was 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.

COURT'S INSTRUCTION NO. 17

KNOWINGLY

The word "knowingly," as that term has been used from time to time in these instructions, means that the act was done voluntarily and intentionally, and not because of mistake or accident.

COURT'S INSTRUCTION NO. 18

WILLFULLY

The word “willfully,” as that term has been used from time to time in these instructions, means that the act was committed voluntarily and purposely, with the specific intent to do something the law forbids.

COURT'S INSTRUCTION NO. 19(A)

CAUTION – PUNISHMENT
SINGLE DEFENDANT, SINGLE COUNT IN INDICTMENT

I caution you, members of the jury, that you are here to determine from the evidence in this case whether the defendant is guilty or not guilty. The defendant is not on trial for any act or conduct or offense not alleged in the indictment. Nor are you called upon to return a verdict as to whether any other person or persons not on trial as defendants in this case are guilty or not guilty.

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

COURT'S INSTRUCTION NO. 19(B)

CAUTION – PUNISHMENT
SINGLE DEFENDANT, MULTIPLE COUNTS IN INDICTMENT

A separate crime or offense is charged in each count of the indictment. Each charge and the evidence pertaining to it should be considered separately. The fact that you may find the defendant guilty or not guilty as to one of the offenses charged should not control your verdict as to any other offense charged.

I caution you, members of the jury, that you are here to determine from the evidence in this case whether the defendant is guilty or not guilty. The defendant is not on trial for any act or conduct or offense not alleged in the indictment. Nor are you called upon to return a verdict as to whether any other person or persons not on trial as defendants in this case are guilty or not guilty.

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

COURT'S INSTRUCTION NO. 19(C)

CAUTION – PUNISHMENT
MULTIPLE DEFENDANTS, SINGLE COUNT

The case of each defendant and the evidence pertaining to each defendant should be considered separately and individually. The fact that you may find one of the defendants guilty or not guilty should not control your verdict as to any other defendant.

I caution you, members of the jury, that you are here to determine from the evidence in this case whether the defendants are guilty or not guilty. The defendants are not on trial for any act or conduct or offense not alleged in their respective indictments. Nor are you called upon to return a verdict as to whether any other person or persons not on trial as defendants in this case are guilty or not guilty.

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

COURT'S INSTRUCTION NO. 19(D)

CAUTION – PUNISHMENT
MULTIPLE DEFENDANTS, MULTIPLE COUNTS

A separate crime or offense is charged against one or more of the defendants in each count of the indictment. Each offense, and the evidence pertaining to it, should be considered separately. Also, the case of each defendant should be considered separately and individually. The fact that you may find one or more of the accused guilty or not guilty of any of the offenses charged should not control your verdict as to any other offense or any other defendant.

I caution you, members of the jury, that you are here to determine from the evidence in this case whether the defendants are guilty or not guilty. The defendants are not on trial for any act or conduct or offense not alleged in their respective indictments. Nor are you called upon to return a verdict as to whether any other person or persons not on trial as defendants in this case are guilty or not guilty.

Also, the punishment provided by law for the offense charged in the indictment is a matter exclusively within the province of the court or

judge and should never be considered by the jury in any way in arriving at an impartial verdict.

COURT'S INSTRUCTION NO. 20

DUTY TO DELIBERATE

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

It is your duty as jurors to consult with one another and to deliberate in an effort to reach an agreement, if you can do so without violence 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 the other jurors. In the course of your deliberations, do not hesitate to re-examine your own views and change your opinion if 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 the other jurors, or solely for the purpose of returning a verdict.

Remember at all times that you are not partisans. You are judges – judges of the facts. Your sole interest is to seek the truth from the evidence in the case.

COURT'S INSTRUCTION NO. 21(A)
VERDICT FORM – SINGLE DEFENDANT

Upon retiring to the jury room you should first 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.

(Explain verdict form.)

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, then date and sign it. You will then return to the courtroom.

If, during your deliberations, you desire to communicate with the court, please reduce your message or question to writing signed by the foreperson and pass the note to the marshal, who will bring it to my attention. I will then respond as promptly as possible, either in writing or by having you returned to the courtroom so that I can address you orally. I caution you,

however, with regard to any message or question you might send, that you should never state or specify your numerical division at the time.

COURT'S INSTRUCTION NO. 21(B)

VERDICT FORMS – MULTIPLE DEFENDANTS

Upon retiring to the jury room you should first 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. Forms of verdicts have been prepared for your convenience.

(Explain verdict forms.)

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

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