UNITED STATES v. MR. SMITH AND MS. JONES

CRIMINAL NUMBER 00-00000-RGS

JURY INSTRUCTIONS

Members of the Jury:

Now that you have heard the evidence in the case and the closing arguments of the lawyers, the time has come for me to instruct you on the law. My instructions will be in four parts; first, some instructions on the general rules that define the duties of the jury in a criminal case; second, a brief review of what is and what is not evidence in a criminal trial, together with some guidelines that may assist you in evaluating the evidence that has been presented; third, I will give instructions defining the elements, or components, of the crimes charged; and finally, I will explain the rules that will guide the conduct of your deliberations.

In defining the duties of the jury, let me first remind you of the general rules.

It is your duty to find the facts from all of the evidence in the case. To the facts as you find them you must apply the law as I will explain it to you. You must follow the law as I describe it, whether you personally agree with the wisdom of the law or not. You must do your duty as jurors regardless of any personal likes or dislikes, opinions, prejudices, or sympathy. That means that you must decide the case based solely on the evidence that is before you.

In following my instructions, you must follow all of them and not single out some and ignore others; they are all equally important. And you must not read into these instructions, or into anything that I may have said or done during the course of the trial, any suggestion from me as to the verdict you should return – that is a matter committed entirely to your discretion. Even if I were to have an opinion as to what your verdict should be, my opinion would be utterly irrelevant. The verdict is yours, and yours alone, to render as the sole judges of the facts.

At the beginning of the case, I explained some important rules that govern criminal trials. I will restate them for you now in more detail. There are three basic rules.

PRESUMPTION OF INNOCENCE

The first rule is that a defendant is presumed innocent unless and until proven guilty, and this presumption alone is sufficient to acquit him or her. The indictment brought by the United States against Mr. Smith and Ms. Jones is an accusation, and only that; it is not proof of anything at all. A defendant is innocent in the eyes of the law, unless and until you, the jury, decide, by a unanimous vote, that the government has proved his or her guilt beyond a reasonable doubt.

BURDEN OF PROOF

That brings me to the second rule. In a criminal case, the burden of proving guilt is on the government. It has that burden throughout the trial. A defendant never has the burden of proving his or her innocence. The right of a defendant to put the government to its burden of proof is one of the most fundamental guarantees of our Constitution. This means that a defendant has no obligation to produce evidence, to call witnesses, nor can he be required to testify. A defendant has an absolute right not to testify and Mr. Smith has chosen to exercise that right. You may not draw an inference of guilt from the fact that he did not testify, or even discuss that fact in your deliberations. The burden rests on the government and the government alone to prove each and every element of the crimes charged beyond a reasonable doubt, and a defendant has a right to rely upon the failure or inability of the government to meet its burden in establishing any essential element of the crimes with which he or she is charged.

REASONABLE DOUBT

Now, what is proof beyond a reasonable doubt? The term is often used, and is probably pretty well understood intuitively, although it is not easily defined. Proof beyond a reasonable doubt does not mean proof beyond all possible doubt, or proof to a mathematical certainty, for almost everything in our common experience is open to some

possible or imaginary doubt. It does, however, mean that the evidence must exclude any reasonable doubt as to the defendant's guilt.

A reasonable doubt may arise not only from the evidence produced but also from the lack of relevant evidence. Reasonable doubt exists when, after weighing and considering all of the evidence in the case using your reason and common sense, you cannot say that you have a firm and settled conviction that a charge is true.

A defendant is never to be convicted on suspicion or conjecture. If, for example, you were to view the evidence in the case as reasonably permitting either of two conclusions – one that a defendant is guilty of any one or more of the crimes charged, the other that he or she is not guilty of any one or more of these crimes – then it follows that you would be required to find him or her not guilty as to the particular charge at issue.

It is not enough for the government to establish a probability, even a strong probability, that a defendant is more likely guilty than not. That is not enough. Proof beyond a reasonable doubt must be proof of such a convincing character that you can, consistent with your oath as jurors, conscientiously base your verdict upon it. If you so find as to any charge against either defendant, you will return a verdict of guilty on that charge. If, on the other hand, you think there is a real possibility that a defendant is not guilty of a charge, you must give him or her the benefit of that doubt and find him or her not guilty of that charge.

EVIDENCE AT TRIAL

Next I want to review with you what is meant by evidence in the context of a criminal trial.

Evidence is produced at a criminal trial in one of three ways, all of which you have seen illustrated during the trial of this case.

First, through the sworn testimony of witnesses, both on direct and cross-examination.

Second, through physical objects, or exhibits, identified by a witness, and admitted as such during the trial.

Third, by stipulation, or agreement between the parties that certain facts are true and need not be independently proven as such at trial. The stipulations entered between the government and the defendants will be found in the instructions and verdict slip book that I will give to your foreperson.

Certain things are not evidence and are not to be treated as such in your deliberations.

1. Arguments and statements by lawyers, as I have previously cautioned, are not evidence. What the lawyers have said over the course of the trial you may find helpful, or even persuasive in reaching a verdict, but the facts are to be determined from your own evaluation of the credibility of the testimony of the witnesses, the exhibits, and any reasonable factual inferences you choose to draw from the evidence that is before you.
2. Questions to witnesses are not evidence. They can only be considered in the sense that they give context or meaning to a witness's answer.
3. Objections to questions are not evidence. Attorneys, as I explained at the outset of the trial, have a duty to their clients to object when they believe that a question is improper under the rules of evidence. You should not be influenced by the fact that an objection was made or by the way I ruled on it. If I sustained the objection, you should ignore the lawyer's question, and any assertion of fact that the question might have contained. If the objection was overruled, you should treat the question and the witness's answer like any other.
4. Testimony that I excluded, struck, or instructed you to disregard is not evidence and should not be considered in your deliberations.

5. Anything you may have seen or heard outside the courtroom during the course of the trial is not evidence. You must decide the case solely on the evidence that was offered and received in open court.

6. If you have kept notes, as most of you have, remember that your notes are not evidence. They are only an aid to be used during the deliberations to refresh your recollection of the actual evidence offered during the trial.

7. Finally, as I have mentioned before, an indictment is not evidence. It is merely a charging document notifying a defendant that he must stand trial on the charges that it specifies.

Regardless of the way in which evidence is presented, it comes in one of two forms, either as direct or as so-called circumstantial evidence. Direct evidence is direct proof of a fact, usually offered through the testimony of a person who claims to have been an eyewitness to an event or a participant in a conversation. Circumstantial evidence is proof of a fact, or a set of facts, from which you could infer or conclude that another fact is true, even though you have no direct evidence of that fact.

For instance, if you were to awake in the morning and, even though the day was bright and clear, see puddles of water on the street, you might draw the inference that it had rained during the night, even though your sleep had been uninterrupted by the familiar sounds of rain. In other words, the fact of rain is an inference that can be drawn from the presence of water on a street. An inference may be drawn, however, only if it is reasonable and logical, and not if it is speculative or based on conjecture. If, for example, you observed puddles of water on your street, but not on any other street in your neighborhood, other facts, like a broken water main, or if you live in the suburbs, a neighbor's malfunctioning sprinkler system, might explain the presence of water. In deciding whether to draw an inference, you must look at and consider all of the facts in the case in the light of reason, common sense, and your own life experience.

Neither type of evidence, direct or circumstantial, is considered superior or inferior to the other. Both types of evidence may be considered in reaching your verdict and may be given whatever weight you as the finders of fact deem that evidence to be worth.

CREDIBILITY OF WITNESSES

Most evidence received at trial is offered through the testimony of witnesses. As the jury, you are the sole judges of the credibility of these witnesses. If there are inconsistencies in the testimony, it is your function to resolve these conflicts and to determine where the truth lies.

You may choose to believe everything that a witness said, or only part of it, or none of it. If you do not believe a witness's testimony that something happened, that of course is not evidence that it did not happen. It simply means that you must put aside that testimony and look elsewhere for credible evidence.

Often it may not be so much what a witness says, but how he or she says it that might give you a clue whether or not to accept his or her version of an event as believable. You may consider a witness's character, his or her demeanor on the witness stand, his or her frankness or lack of frankness in testifying, whether the witness was contradicted by anything that he or she said before the trial, and whether his or her testimony appears reasonable or unreasonable, probable or improbable, in light of all the other evidence in the case. You may take into account how good an opportunity the witness had to observe the facts about which he or she testified, his or her mental and physical state at the time the observations were made, the degree of intelligence the witness shows, and whether his or her memory seems accurate. You may consider a witness's motive for testifying in a particular way, whether he or she displays any bias in doing so, and whether as a result he or she has an interest in the outcome of the case. Now simply because a witness has an interest in the outcome of the case does not mean that the witness is not trying to tell you the truth as he or she recalls it or believes it to have been. But a witness's interest in

the case is a factor that you may consider along with everything else. You may also consider the fact that a witness may be perfectly sincere in his or her account of an event and simply be mistaken as to the truth.

Several times it has been pointed out to you that certain witnesses have testified previously under oath about the subject matter of this trial in ways that you might find consistent or inconsistent with their testimony during the trial. Because these statements were made under oath, you may consider them as if they were made here in the courtroom in evaluating the credibility of what the witness said during both direct and cross-examination.

The weight of the evidence obviously does not depend on the number of witnesses testifying for one side or the other. You must determine the credibility of each witness who testified, and then reach a verdict based on all of the believable evidence in the case.

COMPLICITOUS WITNESSES

You have heard testimony from one witness, Mr. Doe, who testified that he pled guilty to committing crimes related to the criminal activity charged in the indictment. The fact that Mr. Doe entered a guilty plea is not a factor that you may consider in assessing the guilt or innocence of the defendants. Mr. Doe may be presumed to have acted after an assessment of his own best interest, for reasons that are personal to him, but that fact has no bearing on any other party to this case. The guilty plea may only be considered by you in assessing the credibility of Mr. Doe's testimony.

A witness who admits to committing a crime and testifies against others pursuant to a plea agreement with the government usually does so in the expectation of more lenient treatment because of his or her cooperation. A witness testifying in such circumstances may, of course, be completely truthful. Still, you should consider the testimony of a witness testifying pursuant to a plea agreement with particular caution and you should scrutinize the testimony closely to determine whether it is colored in such a way so as to protect or

further the witness's own interests. The testimony of a cooperating witness should be received by you with great care, and should be given the weight, if any, that you believe it deserves.

EXPERT WITNESSES

As a rule a witness is not permitted to offer an opinion about the facts to which he or she testifies, unless it concerns a matter falling within our common experience. An exception is made for those who are asked to testify as experts, as was the case with the forensic examiners from whom we heard. These are witnesses, who by education and experience, have acquired specialized knowledge about which they are permitted to give opinions, as well as the reasons for their opinions. This type of testimony is allowed in the belief that the knowledge of certain experts is so specialized that the facts which they have mastered are beyond the collective knowledge of the court and the jury.

The credibility of the testimony of an expert witness is judged like that of any other witness. Simply because the law allows a witness to give an opinion does not mean that you must accept that opinion. If you decide that the opinion of an expert witness is not based on sufficient education or experience, or if you conclude that the reasons given for the opinion are not convincing or are outweighed by other evidence in the case, you may disregard the opinion entirely.

In deciding whether or not to believe a witness, keep in mind that people sometimes forget things, or get confused, or remember an event differently. Memory is not always reliable, and when someone recounts a story twice, it will seldom be identical in every respect, unless it is a memorized lie or the witness is possessed of extraordinary perception and recall. It is for you to decide whether any contradictions in a witness's testimony are innocent lapses of memory or intentional falsehoods. That may depend on whether important facts or small details are at issue, and how important the facts might have appeared to the witness at the time they were perceived.

THE INDICTMENT

With these preliminary instructions in mind, let me turn to the charges against the defendants as set out in the Indictment. You will remember that the fact of an Indictment is not evidence. An Indictment is merely an accusation and may not be considered as evidence of a defendants' guilt.

The defendants have pled not guilty to each charge in the Indictment. When a defendant pleads not guilty, the government is put to the obligation of proving each material component of the offense charged. We commonly call these components the "elements" of the crime. The government has the burden of establishing each element of an offense by proof beyond reasonable doubt.

An Indictment may allege more than one charge against a defendant. In that case, the different charges are stated separately in what are called counts. The Indictment in this case is comprised of a number of separate counts, some thirty-seven altogether, each of which names both defendants. The nature of each count being submitted for your verdict is set out in a table form in the verdict slip. You must make a determination as to whether either or both defendants has been proven guilty of each separate count. Bear in mind, however, that you may find that evidence pertaining to one offense is also relevant to your consideration of other alleged offenses.

The Indictment charges that the offenses were committed "on or about" certain dates, rather than "on" a date certain. The proof need not establish the exact date of an alleged offense. It is sufficient if the evidence in the case establishes beyond a reasonable doubt that the offense was committed on dates that were reasonably near those that are alleged.

KNOWING AND WILLFUL

A person acts knowingly if he or she was conscious and aware of his or her actions, realized what he or she was doing or what was happening around him or her and did not

act because of ignorance, mistake or accident. A person may also be held to have acted knowingly if he or she deliberately closed his or her eyes to a fact that would otherwise have been obvious to someone in identical circumstances. In order to infer knowledge under this principle, you must find that two things have been established. First, that a defendant was aware of a high probability of the fact in question. And second, that the defendant consciously and deliberately avoided learning of that fact. That is to say, the defendant made himself or herself blind to that fact. It is entirely up to you to determine whether he or she deliberately closed his or her eyes to the fact and, if so, what inference, if any, should be drawn. However, it is important to bear in mind that mere negligence or mistake in failing to learn the fact is not sufficient. There must be a deliberate effort to remain ignorant of the fact.

Intent and knowledge may not ordinarily be proven directly because there is no way to directly scrutinize the inner working of the human mind. In determining what a defendant knew or intended at a particular time, you may consider any statements made or acts done or omitted by the defendant, and all other facts and circumstances received in evidence that may aid in your determination of the defendants' knowledge or intent.

An act or failure to act is "willful" if done voluntarily and intentionally, and with the specific intent to do something the law forbids, or with specific intent to fail to do something the law requires to be done; that is to say, with bad purpose either to disobey or to disregard the law.

AIDING AND ABETTING

To aid and abet means intentionally to help someone else commit a crime. To establish aiding and abetting, the government must prove beyond a reasonable doubt: (1) that someone else committed the charged crime; and (2) that a defendant willfully participated in it as he or she would in something that he or she wished to bring about.

This means that the government must prove that a defendant consciously shared the other person's knowledge of the underlying criminal act, intended to help him or her, and willfully took part in the endeavor, seeking to make it succeed. The defendant need not perform the underlying criminal act, be present when it is performed, or be aware of the details of its execution to be guilty of aiding and abetting. But a general suspicion that an unlawful act may occur or that something criminal is happening is not enough. Mere presence at the scene of a crime and knowledge that a crime is being committed are also not sufficient to establish aiding and abetting.

An act, as I have previously instructed, is done willfully if done voluntarily and intentionally with the intent that something the law forbids be done – that is to say with bad purpose, either to disobey or disregard the law.

DELIBERATIONS

I will now say a few words about your deliberations.

It is your duty to discuss the case with your fellow jurors for the purpose of reaching agreement if you can do so. Each of you must decide the case for yourself, but should do so only after considering all of the evidence, listening to the views of your fellow jurors, and discussing the case fully with the other jurors. This case has taken a great deal of time to prepare and try. There is no reason to think that it could have been better tried - in fact it was tried ably by both sides - or that another jury would be better qualified to render a decision. It is important therefore that you reach a verdict if you can do so conscientiously. You should not hesitate to reconsider your own opinions from time to time and to change them if you are convinced that they are wrong. However, do not surrender an honest conviction as to the weight and effect of the evidence simply for the expedience of arriving at a verdict.

Your verdict must be unanimous as to whether the defendant is guilty or not guilty of each charge that has been submitted to you for a verdict. Each count must be

considered separately. You may find Mr. Smith and Ms. Jones guilty of every charge, you may find him or her not guilty of every charge, or you may find him or her guilty of some charges and not guilty of others. But remember that your verdict as to each count must be unanimous.

You may not draw any inference, favorable or unfavorable to the government, from the fact that any other person was not named as a defendant or is not on trial before you. The question of possible guilt of others should not enter your thinking. Similarly you are not to consider whether a defendant might be guilty of some other crime that the government for whatever reason has not chosen to prosecute. Your task is to determine whether the government has proved beyond a reasonable doubt that the defendant committed the crimes that are actually charged.

Remember also that your verdict must be based solely on the evidence in the case and the law as I have given it to you, and not on anything else.

And finally, as I have instructed, bear in mind that the government has the burden of proof and that you must be convinced of a defendant's guilt beyond a reasonable doubt to return a guilty verdict. If you find this burden has not been met, then you must return a verdict of not guilty.

It is very important that you not communicate with anyone outside the jury room about your deliberations or anything touching this case. There is only one exception to this rule. If it becomes necessary during your deliberations to communicate with me, you may send a note through the court officer, signed by the juror I appoint as your foreperson. No member of the jury should ever attempt to communicate with the court except by means of a signed writing. If you send any notes to me, do not disclose anything about your deliberations. Specifically, do not disclose to anyone – not even to me – how the jury stands, numerically or otherwise, until you have reached a unanimous verdict.