UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE

UNITED STATES OF AMERICA — PLAINTIFF

v. — CRIMINAL ACTION NO. 3:97CR-71-S

MICHAEL G. CARTER
SCOTT P. KENNEDY — DEFENDANTS

COURT'S INSTRUCTIONS TO THE JURY

Members of the Jury:

It is now my duty to instruct you on the rules of law that you must follow and apply in deciding this case. When I have finished you will go to the jury room and begin your deliberations.

It will be your duty to decide whether the United States has proved beyond a reasonable doubt the specific facts necessary to find the defendants guilty of the crimes charged in the indictment.

You must make your decision only on the basis of the testimony and other evidence presented here during the trial; and you must not be influenced in any way by either sympathy or prejudice for or against the defendants or the United States.

You must also follow the law as I explain it to you whether you agree with that law or not; and you must follow all of my instructions as a whole. You may not single out, or disregard, any of the Court's instructions on the law.

The indictment or formal charge against any defendant is not evidence of guilt. The defendant is presumed by the law to be innocent. The law does not require a defendant to prove innocence or produce any evidence at all. The United States has the burden of proving a defendant guilty beyond a reasonable doubt, and if it fails to do so you must find the defendant not guilty.

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

A "reasonable doubt" is a real doubt, based upon reason and common sense after careful and impartial consideration of all the evidence in the case.

Proof beyond a reasonable doubt, therefore, is proof of such a convincing character that you would be willing to rely and act upon it without hesitation in the most important of your own affairs.

You must consider only the evidence that I have admitted in the case. The term "evidence" includes the testimony of the witnesses and the exhibits admitted in the record. Remember that anything the lawyers say is not evidence in the case. It is your own recollection and interpretation of the evidence that controls. What the lawyers say is not binding upon you.

In considering the evidence you may make deductions and reach conclusions which reason and common sense lead you to make; and you should not be concerned about whether the evidence is direct or circumstantial. "Direct evidence" is the testimony of one who asserts actual knowledge of a fact, such as an eye witness. "Circumstantial evidence" is proof of a chain of facts and circumstances indicating that the defendant is either guilty or not guilty. The law makes no distinction between the weight you may give to either direct or circumstantial evidence.

Now, in saying that you must consider the evidence, I do not mean that you must accept all of the evidence as true or accurate. You should decide whether you believe what each witness had to say, and how important that testimony was. In making that decision you may believe or disbelieve any witness, in whole or in part. Also, the number of witnesses testifying concerning any particular dispute is not controlling. The testimony of a small number of witnesses concerning any fact in dispute may be more believable than the testimony of a larger number of witnesses to the contrary.

In deciding how much of a witness' testimony to believe, I suggest that you ask yourself a few questions: Did the witness impress you as one who was telling the truth? Did the witness have any particular reason not to tell the truth or a personal interest in the outcome of the case? Did the witness have a good memory? Did the witness have the opportunity and ability to observe accurately the things he or she testified about? Did the witness appear to understand the questions clearly and answer them directly?

You should also ask yourself whether there was evidence tending to prove that the witness testified falsely concerning some important fact; or, whether there was evidence that at some other time the witness said or did something, or failed to say or do something, which was different from the testimony given before you during the trial.

However, a simple mistake by a witness does not necessarily mean that the witness was not telling the truth as he or she remembers it, because people naturally tend to forget some things or remember other things inaccurately. So, if a witness has made a misstatement, you need to consider whether that was simply an innocent lapse of memory or an intentional falsehood.

When the United States offers testimony or evidence that a defendant made a statement or admission to someone, after being arrested or detained, the jury should consider the evidence concerning such a statement with caution and great care.

It is for you to decide (1) whether the defendant made the statement and (2) if so, how much weight to give to it. In making those decisions you should consider all of the evidence about the statement, including the circumstances under which the defendant may have made it.

Of course, any such statement should not be considered in any way whatever as evidence with respect to any other defendant on trial.

In any criminal case the United States must prove the identity of the defendant as the person who committed the alleged crime.

When a witness points out and identifies a defendant as the person who committed a crime, you must first decide, as with any other witness, whether that witness is telling the truth as he or she understands it. Then, if you believe the witness was truthful, you must still decide how accurate the identification was. Again, I suggest that you ask yourself a number of questions: Did the witness have an adequate opportunity at the time of the crime to observe the person in question? What length of time did the witness have to observe the person? What were the prevailing conditions at that time in terms of visibility or distance and the like? Had the witness known or observed the person at earlier times?

You may also consider the circumstances surrounding the later identification itself including, for example, the manner in which the defendant was presented to the witness for identification, and the length of time that elapsed between the incident in question and the witness' identification of the defendant.

After examining all of the testimony and evidence in the case, if you have a reasonable doubt as to the identity of the defendant as the perpetrator of the offense charged, you must find the defendant not guilty.

Title 18, United States Code, Section 2113(a) and (d), makes it a Federal crime or offense for anyone to take from the person or presence of someone else by force and violence or by intimidation any property or money in the possession of a federally insured bank, and in the process of so doing to put in jeopardy the life of any person by the use of a dangerous weapon or device.

The defendant can be found guilty of that offense only if all of the following facts are proved beyond a reasonable doubt:

First: That the defendant took from the person or the presence of the person described in the indictment, money or property then in the possession of a federally insured bank, as charged;

Second: That the defendant did so by means of force or violence or by means of intimidation;

Third: That the defendant put in jeopardy the life of some person by the use of a dangerous weapon or device while engaged in taking the property or money, as charged; and

Fourth: That the defendant acted knowingly and willfully.

A "federally insured bank" means any bank the deposits of which are insured by the Federal Deposit Insurance Corporation.

To take "by means of intimidation" is to say or do something in such a way that a person of ordinary sensibilities would be fearful of bodily harm.

It is not necessary to prove that the alleged victim was actually frightened, and neither is it necessary to show that the behavior of the defendant was so violent that it was likely to cause terror, panic or hysteria. However, a taking would not be by "means of intimidation" if any fear on the part of the alleged victim resulted from his or her own timidity rather than some intimidating conduct on the part of the defendant. The essence of the offense is the taking of money or property aided and accompanied by willful, intimidating behavior on the party of the defendant.

A "dangerous weapon or device" includes anything capable of being readily operated or wielded by one person to inflict severe bodily harm or injury upon another person.

To "put in jeopardy the life of any person by the use of a dangerous weapon or device" means, then, to expose someone else to a risk of death by the use of such dangerous weapon or device.

In some cases the law which a defendant is charged with breaking actually covers two separate crimes - - one is more serious than the second, ant the second is generally called a "lesser included offense".

So, in this case, if you should unanimously find the defendant "Not Guilty" of the crime charged in the indictment, you must then proceed to determine the guilt or innocence of the defendant as to a lesser included offense.

The crime of robbing a bank, accompanied by the putting in jeopardy of the life of another person by the use of a dangerous weapon or device as charged in the indictment, necessarily includes the lesser offense of robbery of a bank, without the putting in jeopardy of the life of another by the use of a dangerous weapon or device.

With respect to the offense charged in the indictment, then, if you should find the defendant not guilty as charged, you must proceed to determine whether the defendant is guilty or not guilty of the lesser included offense of robbery of a bank, without putting in jeopardy the life of another by the use of a dangerous weapon or device.

Title 18, United States Code, Section 924(c)(1), makes it a separate federal crime or offense for anyone to use or carry a firearm during and in relation to a drug trafficking crime.

The defendants, Michael G. Carter and Scott P. Kennedy, can be found guilty of Count 2 only if the following facts are proved beyond a reasonable doubt:

First: That the defendants committed the felony offense charged in Count 1; and

Second: That such offense was a "crime of violence"; and

Third: That the defendants knowingly used or carried the firearm described in Count 2 of the indictment while committing such crime of violence.

A "crime of violence" means any crime that is a felony and that, by its nature, involves a substantial risk that physical force against the person or property of someone else may be used in the court of committing the offense. You are instructed that the crime charged in Count 1 is a felony offense; but it is for you to decide whether it was also a "crime of violence" as just defined.

The term "firearm" means any weapon which will or is designed to and may readily be converted to expel a projectile by the action of an explosive.

Title 18, United States Code, Section 2312, makes it a Federal crime or offense for anyone to transport, or cause to transported in interstate commerce, a stolen motor vehicle.

The defendant, Michael G. Carter, can be found guilty of that offense only if all of the following facts are proved beyond a reasonable doubt:

First: That the defendant transported, or caused to be transported, in interstate commerce, a stolen motor vehicle, as described in the indictment; and

Second: That the defendant did so willfully, and with knowledge that the motor vehicle had been stolen.

The word "stolen" includes any wrongful and dishonest taking of a motor vehicle with the intent to deprive the owner of the rights and benefits of ownership.

The proof need not show who may have stolen the motor vehicle, only that the defendant transported it, or caused it to be transported in interstate commerce with knowledge that it had been stolen.

The term "interstate commerce" means commerce between one state and another state. If a motor vehicle is driven under its own power across state lines from one state to another it has been transported in interstate commerce.

The guilt of a defendant in a criminal case may be proved without evidence that he personally did every act involved in the commission of the crime charged. The law recognizes that, ordinarily, anything a person can do for himself may also be accomplished through direction of another person as an agent, or by acting together with, or under the direction of, another person or persons in a joint effort.

So, if the acts or conduct of an agent or associate of a defendant is intentionally directed or authorized by that defendant, or if a defendant aids and abets another person by intentionally joining together with that person in the commission of a crime, then the law holds the defendant responsible for the conduct of that other person just as though the defendant had engaged in such conduct himself.

Notice, however, that before any defendant can be held criminally responsible for the conduct of others it is necessary that the defendant associate himself in some way with the crime, and intentionally participate in it. Mere presence at the scene of a crime and even knowledge that a crime is being committed are not sufficient to establish that a defendant either directed or aided and abetted the crime. You must find beyond a reasonable doubt that the defendant was a participant and not merely a knowing spectator.

You will note that the indictment charges that the offense was committed "on or about" a certain date. The United States does not have to prove with certainty the exact date of the alleged offense. It is sufficient if the United States proves beyond a reasonable doubt that the offense was committed on a date reasonably near the date alleged.

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.

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 defendants guilty or not guilty of any of the offenses charged should not affect 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 defendant is guilty or not guilty. The defendant is on trial only for the specific offense alleged in the indictment.

Also, the question of punishment should never be considered by the jury in any way in deciding the case. If the defendant is convicted the matter of punishment is for the Judge to determine.

Any verdict you reach in the jury room, whether guilty or not guilty, must be unanimous. In other words, to return a verdict you must all agree. Your deliberations will be secret; you will never have to explain your verdict to anyone.

It is your duty as jurors to discuss the case with one another in an effort to reach agreement if you can do so. Each of you must decide the case for yourself, but only after full consideration of the evidence with the other members of the jury. While you are discussing the case do not hesitate to re-examine your own opinion and change your mind if you become convinced that you were wrong. But do not give up your honest beliefs solely because the others think differently or merely to get the case over with.

Remember, you are judges of the facts. Your only interest is to seek the truth from the evidence in the case.

When you go to the jury room you should first select one of your members to act as your foreperson. The foreperson will preside over your deliberations and will speak for you here in court.

A form of verdict has been prepared for your convenience.

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