

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE

UNITED STATES OF AMERICA

PLAINTIFF

v.

CRIMINAL ACTION NO. 3:98CR-156-S

WIESLAN CZUPER
a/k/a WIESIEK
a/k/a WIESLAW CZUPER
a/k/a WIESLAW KAMINSKI
a/k/a PIOTR NADOLNY

DEFENDANT

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 defendant 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 defendant or the United States.

You must also follow the law as I explain it to you whether you agree with that law or not. You must follow all of the 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. This means that a defendant has no obligation to testify. Therefore, if a defendant does not testify during a trial, you may not draw any inference or suggestion of guilt from that fact, nor may you consider this in any way in reaching your verdict. 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 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. You need 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.

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.

The testimony of some witnesses must be considered with more caution than the testimony of other witnesses.

In this case the United States called as witnesses persons with whom the United States has entered into agreements providing for the giving of testimony and no prosecution in this district. Such bargaining has been approved as lawful and proper. However, a witness who hopes to gain more favorable treatment in his own case may have a reason to make a false statement because he wants to strike a good bargain with the United States. So, while a witness of that kind may be entirely truthful when testifying, you should consider his testimony with more caution than the testimony of other witnesses.

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.

When knowledge of a specialized subject matter may be helpful to the jury, a person having training or experience in the field—one who is called an expert witness—is permitted to state an opinion.

Merely because an expert witness has expressed an opinion, however, does not mean that you must accept that opinion. The same as with any other witness, it is up to you to decide whether to rely upon it.

In this case, as you know, the indictment charges eight separate offenses called "counts." I will not read it to you at length because you will be given a copy of the indictment for study during your deliberations.

COUNTS 1, 2, AND 3

Title 8, United States Code, Section 1324(a)(1)(A)(ii), makes it a federal crime or offense for anyone to transport an alien within the United States, knowing or in reckless disregard of the fact that the alien is here illegally, and in furtherance of the alien's violation of the law.

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

First: For Count 1, that Jozef Marciniak was an illegal alien who had entered or remained in the United States in violation of the law.

For Count 2, that Bogdan Gavdonovich was an illegal alien who had entered or remained in the United States in violation of the law.

For Count 3, that Vitaliy Dovbush was an illegal alien who had entered or remained in the United States in violation of the law;

Second: That the defendant, on or about October 19, 1998 and October 20, 1998 transported the alien within the United States with intent to further the alien's unlawful presence; and

Third: That the defendant knew or recklessly disregarded the fact that the alien was in the United States in violation of the law.

A person acts with "reckless disregard" when he is aware of, but consciously disregards, facts and circumstances indicating that the person transported was an alien who had entered or remained in the United States in violation of the law.

An alien is any person who is not a natural-born or naturalized citizen, or a national of the United States. The term "national of the United States" includes not only a citizen, but also a person who, though not a citizen of the United States, owes permanent allegiance to the United States.

In order for transportation to be in furtherance of the alien's unlawful presence, there must be a direct and substantial relationship between the defendant's acts of transportation and its furtherance of the alien's presence in the United States. In other words, the act of transportation must not be merely incidental to assisting in the alien's violation of the law.

COUNTS 4, 5, AND 6

Title 18, United States Code, Section 1546, makes it a federal crime or offense for anyone to use a false or counterfeit visa or other document required for entry into the United States.

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

First: For Count 4, that on or about October 19, 1998 and October 20, 1998, the defendant knowingly uttered, used, or possessed a false visa in the name of Jozef Marciniak.

For Count 5, that on or about October 19, 1998 and October 20, 1998, the defendant knowingly uttered, used, or possessed a false Naturalization Service Arrival and Departure Record Form I-94 in the name of Vitaliy Dovbush.

For Count 6, that on or about October 19, 1998 and October 20, 1998, the defendant knowingly uttered, used, or possessed a false Naturalization Service Arrival and Departure Record Form I-94 in the name of Bogdan Gavdonovich; and

Second: That in so doing the defendant acted with knowledge that such visa, permit or document had been forged, counterfeited, altered, or falsely made or had been procured by means of a false claim or statement.

COUNT 7

Title 18, United States Code, Section 1028(a)(3), makes it a federal crime or offense for anyone to knowingly possess with intent to use unlawfully or transfer unlawfully five or more false identification documents.

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

First: That on or about October 20, 1998 the defendant knowingly possessed with intent to use unlawfully or transfer unlawfully five or more false identification documents; and

Second: That the defendant knew that the identification documents were false.

COUNT 8

Title 18, United States Code, Section 1001, makes it a federal crime or offense for anyone to willfully make a false or fraudulent statement to a department or agency of the United States.

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

First: That on October 23, 1998 and November 5, 1998 the defendant knowingly made false statements in relation to a matter within the jurisdiction of a department or agency of the United States, as charged;

Second: That the false statements were related to a material matter; and

Third: That the defendant acted willfully and with knowledge of the falsity.

A statement is "false" when made if it is untrue and is then known to be untrue by the person making it. It is not necessary to show, however, that the United State agency was in fact deceived or misled.

The Immigration and Naturalization Service, Department of Justice, is an "agency of the United States," and the filing of documents with that agency to effect a change in the immigration status of an alien is a matter within the jurisdiction of that agency.

The making of a false statement is not an offense unless the falsity relates to a "material" fact. A statement is "material," if it has a natural tendency to influence, or is capable of influencing, the decision of the agency. However, whether a statement is "material" does not depend on whether the agency was actually deceived.

The law recognizes several kinds of possession. A person may have actual possession or constructive possession. A person may also have sole possession or joint possession.

A person who has direct physical control of something on or around his person is then in actual possession of it.

A person who is not in actual possession, but who knowingly has both the power and the intention at a given time to exercise dominion and control over something, either alone or together with someone else, is in constructive possession of it.

If one person alone has possession of something, possession is sole. If two or more persons share possession, possession is joint.

Whenever the word "possession" is used in these instructions, it includes actual and constructive possession, and also sole and joint possession.

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 in these instructions, means that the act was done voluntarily and intentionally and not because of mistake or accident.

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

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 affect your verdict as to any other offense charged.

The defendant is on trial only for those specific offenses 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 not 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.

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.