

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE

CRIMINAL ACTION NO. 3:98-CR-00033-H

UNITED STATES OF AMERICA

PLAINTIFF

V.

JERRY LEE HOWARD

DEFENDANT

COURT'S INSTRUCTIONS TO THE JURY

MEMBERS OF THE JURY:

Now that you have heard all the evidence and the argument of the attorneys, it is my duty to give you instructions regarding the law that you must follow in deciding this case.

It is 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, prejudice, or bias for or against the defendant or the United States. Justice through trial by jury must always depend upon the willingness of each individual juror to seek the truth from the evidence presented and to apply that truth to the legal instructions I shall give you.

You must follow the law as I explain it to you whether you agree with the 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 the 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 his 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.

Proof beyond a reasonable doubt does not mean proof beyond all possible doubt. Possible doubts or doubts based purely on speculation are not reasonable doubts. A reasonable doubt is a real doubt based on reason and common sense after careful and impartial consideration of all the evidence in the case. It may arise from the evidence, the lack of evidence, or the nature of the evidence.

Proof beyond a reasonable doubt, therefore, is proof that is so convincing that you would not hesitate to rely and act on it in making the most important decisions in your own lives. If you are convinced that the United States has proved the defendant guilty beyond a reasonable doubt, say so by returning a guilty verdict. If you are not convinced, say so by returning a not guilty verdict.

As I explained previously, you must decide what the facts are from the evidence that you saw and heard here in court. You may consider only the evidence that I have admitted in this case. The term “evidence” includes the sworn testimony of the witnesses and the exhibits admitted in the record. Do not let rumors, suspicions, or anything else that you may have seen or heard outside of court influence your decision in any way.

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 draw reasonable inferences, deductions, and conclusions from the testimony and exhibits which reason and common sense lead you to make.

In saying that you must consider all the evidence, I do not mean that you must necessarily 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 the testimony of each witness.

In deciding whether you believe or do not believe any witness I suggest that you ask yourself a few questions: Did the person impress you as one who was telling the truth? Did he or she have any particular reason not to tell the truth? Did he or she have a personal interest in the outcome of the case? Did the witness seem to have a good memory? Did the witness have the opportunity and ability to observe accurately the things he or she testified about? Did he or she appear to understand the questions clearly and answer them directly? Did the witness's testimony differ from the testimony of other witnesses? You may consider evidence of a witness's previous conviction of a crime in deciding whether you believe or disbelieve the testimony of that witness.

You have heard the testimony of expert witnesses. An expert witness has special knowledge or experience that allows the witness to give an opinion. You do not have to accept an expert's opinion. As with any other witness, it is up to you to decide whether to rely upon it. In deciding how much weight to give it, you should consider the witness's qualifications and how he or she reached their conclusions. Remember that you alone decide how much of a witness's testimony to believe, and how much weight it deserves.

A defendant has an absolute right not to testify. A defendant need not prove anything.

Therefore, the fact that a defendant did not testify or did not call any witnesses cannot be considered by you in any way during your deliberations.

Do not make any decisions based only on the number of witnesses who testified. What is more important is how believable the witnesses were, and how much weight you think their testimony deserves. Remember, witnesses are not the property of either defendant or the United States; they merely give testimony which you should consider. Concentrate on that, not the numbers.

The lawyers for both sides objected to some of the things that were said or done during the trial. Do not hold that against either side. The lawyers have a duty to object whenever they think that something is not permitted by the rules of evidence. Those rules are designed to make sure that both sides receive a fair trial.

Also, do not interpret my rulings on their objections as any indication of how I think the case should be decided. My rulings were based on the rules of evidence, not on how I feel about the case.

In this case, the indictment charges two separate offenses called “counts.” The number of charges is not evidence of guilt, and this should not influence your decision in any way. The defendant is on trial only for the particular crimes charged in the indictment. It is your duty to consider separately the evidence that relates to each charge, and to return a separate verdict for each charge. For each charge, you must decide whether the government has presented proof beyond a reasonable doubt that the defendant is guilty of that particular charge. Your decision on one charge, whether it is guilty or not guilty, should not influence your decision on any of the other charges.

I have decided to accept as proven the fact that Fort Knox, Kentucky, is an area within the special maritime and territorial jurisdiction of the United States. You may accept this fact as true.

The defendant is charged in Count One of the indictment with aggravated sexual abuse in violation of Section 2241(a)(1) of Title 18 of the United States Code. In order for the defendant to be found guilty of that charge the government must prove beyond a reasonable doubt that the defendant knowingly caused Katina Lynn Porter to engage in a sexual act by (1) using force against her; or (2) by threatening or placing Katina Lynn Porter in fear that she would be subject to death, serious bodily injury, or kidnaping; and that these acts occurred within the territorial jurisdiction of the United States.

In this case, “sexual act” means contact between the mouth and vulva.

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.

The defendant is charged in Count Two of the indictment with first degree wanton endangerment in violation of Section 13 of Title 18 of the United States Code and Section 508.060 of the Kentucky Revised Statutes. In order for the defendant to be found guilty of that charge the government must prove beyond a reasonable doubt that, on or about the 5th day of May, 1993, the defendant drove a motor vehicle at a high rate of speed toward Lamar Jones; that he thereby wantonly created a substantial danger of death or serious physical injury to Lamar Jones; and that under the circumstances, such conduct manifested extreme indifference to the value of human life; that these acts occurred within the special maritime and territorial jurisdiction of the United States; and that defendant did not act in self-defense.

“Serious physical injury” means physical injury which creates a substantial risk of death, or which causes serious and prolonged disfigurement, prolonged impairment of health, or prolonged loss or impairment of the function of any bodily organ.

A person acts “wantonly” as that term is used from time to time in these instructions with respect to a result or to a circumstance when he is aware of and consciously disregards a substantial and unjustifiable risk that the result will occur or that the circumstance exists. The risk must be of such nature and degree that disregard thereof constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation.

I will now define for you how you should determine whether defendant acted in “self-defense,” as that term is used in these instructions from time to time. At that time defendant drove the vehicle toward Lamar Jones, if he did not recognize that Lamar Jones was a police officer effecting an arrest and if he believed that there was an impending danger that Lamar Jones would use physical force upon him, defendant was entitled to use such physical force

against Lamar Jones that was reasonably necessary to protect himself, but including the right to use deadly physical force only if he reasonably believed it to be necessary in order to protect himself from death or serious physical injury at the hands of Lamar Jones.

If you find that the government has failed to prove beyond a reasonable doubt a substantial danger of death or serious physical injury to Lamar Jones, you may consider whether the defendant committed second degree wanton endangerment, in violation of Section 13 of Title 18 of the United States Code and Section 508.070 of the Kentucky Revised Statutes. In order for the defendant to be found guilty of second degree wanton endangerment, the government must prove beyond a reasonable doubt that, on or about the 5th day of May, 1993, the defendant drove a motor vehicle at a high rate of speed toward Lamar Jones, that he thereby wantonly created substantial danger of physical injury to Lamar Jones; that these acts occurred within the special maritime and territorial jurisdiction of the United States; and that defendant did not act in self-defense.

“Physical injury” means substantial physical pain or any impairment of physical condition.

You have heard testimony that after the crime was supposed to have been committed, the defendant fled the scene, leading police on an extended high-speed chase. If you believe that the defendant fled the scene and led police on an extended high-speed chase, then you may consider this conduct, along with all the other evidence, in deciding whether the government has proved beyond a reasonable doubt that he committed the crimes charged. This conduct may indicate that the thought he was guilty and was trying to avoid punishment. On the other hand, sometimes an innocent person may flee and lead police on an extended high-speed chase to avoid being arrested, or for some other innocent reason.

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.

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

To find the defendant guilty, every one of you must agree that the government has overcome the presumption of innocence with evidence that proves his guilt beyond a reasonable doubt.

To find him not guilty, every one of you must agree that the government has failed to convince you beyond a reasonable doubt.

Now that all the evidence is in and the arguments are completed, you are free to talk about the case in the jury room. It is your duty as jurors to consult with one another, and to deliberate with a view toward reaching agreement, if you can do so without violence to individual judgment. Talk with each other, listen carefully and respectfully to each other's views, and keep an open mind as you listen to what your fellow jurors have to say.

You must decide the case for yourself, but only after an impartial consideration of the case with your fellow jurors. In the course of your deliberations, do not hesitate to reexamine 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 your fellow jurors, or for the mere purpose of returning a verdict.

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

No one will be allowed to hear your discussions in the jury room, and no record will be made of what you say. So you should all feel free to speak your minds.

If you decide that the government has proved the defendant guilty, then it will be my job

to decide what the appropriate punishment should be. It would violate your oaths as jurors to even consider the possible punishment in deciding your verdict. Your job is to look at the evidence and decide if the government has proved the defendant guilty beyond a reasonable doubt.

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 Verdict Form has been prepared for your convenience. You will take this form to the jury room and, if and when you have reached unanimous agreement as to your verdict, you will have your foreperson fill in, date, and sign the forms which set forth the verdict with respect to each count in the case. You will then return with your verdict to the courtroom.

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VERDICT

We, the Jury, find the Defendant, Jerry Lee Howard,

On the count of aggravated sexual abuse,

NOT GUILTY

GUILTY

On the count of first degree wanton endangerment,

NOT GUILTY

GUILTY

If you found the Defendant NOT GUILTY on the count of first degree wanton
endangerment,

On the count of second degree wanton endangerment,

NOT GUILTY

GUILTY

FOREPERSON

Date: _____