

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF KENTUCKY  
AT LOUISVILLE

UNITED STATES OF AMERICA

PLAINTIFF

v.

CRIMINAL ACTION NO. 3:98CR-90-S

CARTER J. EUBANKS

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; 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. 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 verdicts. 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.

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.

## COUNT A

Title 18, United States Code, Section 2113(a), makes it a Federal crime for anyone to take from the person or presence of someone else by force and violence or by intimidation any money in the possession of a federally insured bank.

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

First: That on or about April 9, 1998, the defendant took from a person money 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; and

Third: That the defendant did so knowingly.

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 aided and accompanied by willful, intimidating behavior on the part of the defendant.

If you find the defendant guilty as to Count A, you will so indicate on the verdict form and proceed to consider Counts B and C in accordance with the remaining instructions.

If you find the defendant not guilty as to Count A, you will so indicate on the verdict form, end your deliberations, and return to the courtroom.

## COUNT B

Title 18, United States Code, Section 2113(d) makes it a more serious crime for anyone, while in the process of violating subsection (a) of the statute, to assault or to put in jeopardy the life of any person by the use of a dangerous weapon.

In order for the defendant to be found guilty of the crime charged in Count B, the United States must prove beyond a reasonable doubt each of the three facts mentioned in instructing you as to Count A and must also prove, beyond a reasonable doubt, a fourth specific fact, namely:

That the defendant willfully assaulted, or put in jeopardy the life of a person by the use of a dangerous weapon while engaged in taking money from the bank as charged.

An "assault" may be committed without actually striking or injuring another person. So, an assault occurs whenever one person makes a willful attempt or threat to injure someone else, and also has an apparent, present ability to carry out the threat such as by flourishing or pointing a dangerous weapon or device.

A "dangerous weapon" 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" means, then, to expose someone else to a risk of death by the use of such dangerous weapon.

If you have found the defendant not guilty as to Count A, you must also find him not guilty as to Count B.

### COUNT C

Title 18, United States Code, Section 924(c)(1), makes it a separate federal crime for anyone to carry a firearm during and in relation to a crime of violence. The crime charged in Count A is a crime of violence under the law.

The defendant can be found guilty as to Count C only if all of the following facts are proved beyond a reasonable doubt:

First: That Carter J. Eubanks committed the crime charged in Count A; and

Second: That during and in relation to such crime, he knowingly used or carried the firearm described in the indictment.

The term “firearm” includes any weapon which is designed to expel a projectile by the action of an explosive.

The phrase “uses a firearm” means that the firearm was actively employed in the course of the commission of the crime of violence. You may find that a firearm was used during the commission of the crime of violence if you find that the firearm was brandished or displayed.

The phrase “carries a firearm” means that the firearm was physically brought with the defendant in the course of the violent crime and was immediately available for use, either on the defendant or immediately within his reach.

A firearm is used or carried “in relation to” a crime of violence if the firearm furthered the purpose or effect of the crime, and the firearm's presence was not the result of coincidence.

If you have found the defendant not guilty as to Count A, you must also find him not guilty as to Count C.

During the course of the trial, as you know from the instruction I gave you then, you heard evidence that at a time other than the time charged in the indictment in this case, the defendant committed an act similar to the act charged here. You may consider such evidence, not to prove criminal propensity, but only to prove the defendant's identity as the person who committed the crimes charged in this case. Do not consider it for any other purpose.

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

A separate crime 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 crimes charged should not affect your verdict as to any other crime charged, except as I have otherwise instructed.

The defendant is on trial only for those specific crimes 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.