

Jury Instructions:

**United States of America v. Alvin Pennue
(12-059-M)**

I intend to give you a copy of these instructions for use in the jury room, so feel free to simply listen and not worry about note taking

Introduction

Ladies and gentlemen, you are the trier of facts. You alone must determine what the facts are in this particular case. It is my duty to instruct you on the law applicable to this case. You must consider the instructions as a whole. You should not choose one part and disregard another. You must accept and apply the law as I give it to you in its entirety, and this is true whether you personally agree with the law or not. It would be a violation of the oath you took as jurors to base a decision on any version of the law other than that contained in my instructions, just as it would be a violation of that oath to return a decision upon anything but the evidence in this case. It is not up to you to decide what the law is or should be. Your duty is to apply the law as I explain it to you.

Presumption of Innocence

As I told you at the start of this trial, Mr. Pennue is presumed to be innocent of the accusations against him.

It is a cardinal principle of our system of justice that every person accused of a crime is presumed to be innocent unless and until his/her guilt is established beyond a reasonable doubt. The presumption is not a mere formality. It is a matter of the most important substance.

The presumption of innocence alone may be sufficient to raise a reasonable doubt and to require the acquittal of a defendant. The defendant before you, Mr. Pennue, has the benefit of

that presumption throughout the trial, and you are not to convict him of a particular charge unless you are persuaded of his guilt of that charge beyond a reasonable doubt.

The presumption of innocence until proven guilty means that the burden of proof is always on the government to satisfy you that Mr. Pennue is guilty of the crime with which he is charged beyond a reasonable doubt. The law does not require that the government prove guilt beyond all possible doubt; proof beyond a reasonable doubt is sufficient to convict. This burden never shifts to Mr. Pennue. It is always the government's burden to prove each of the elements of the crimes charged beyond a reasonable doubt by the evidence and the reasonable inferences to be drawn from that evidence. Mr. Pennue has the right to rely upon the failure or inability of the government to establish beyond a reasonable doubt any essential element of a crime charged against him.

If, after fair and impartial consideration of all the evidence, you have a reasonable doubt as to Mr. Pennue's guilt of a particular crime, it is your duty to acquit him of that crime. On the other hand, if after fair and impartial consideration of all the evidence, you are satisfied beyond a reasonable doubt of Mr. Pennue's guilt of a particular crime, you should vote to convict him.

Defendant's Constitutional Right Not to Testify

Mr. Pennue did not testify at this trial. A defendant has an absolute right not to testify, since the entire burden of proof in this case is on the government to prove that the defendant is guilty. No inference of guilt, or anything else, may be drawn from the fact that Mr. Pennue did not testify. It is not up to Mr. Pennue to prove that he is innocent.

Under our system of law, a defendant has a perfect right to say to the government, "You have the burden of proving your case against me beyond a reasonable doubt. I do not have to say word." The fact that Mr. Pennue did not testify has nothing to do with the question of whether

he is guilty or not guilty. So you are not to consider it in any way, or even discuss it in your deliberations. You must determine whether the government has proved its case against Mr. Pennue based solely on the testimony of the witnesses who did testify and the exhibits that were introduced.

The Government as a Party

The mere fact that this case is brought in the name of the United States of America does not entitle the prosecution to any greater consideration than that accorded to Mr. Pennue. By the same token, it does not mean that the prosecution is entitled to any less consideration. All parties, whether government or individuals, stand as equals at the bar of justice.

Proof of All Elements

I will shortly explain the offenses with which Mr. Pennue is charged and the elements the government must prove in order to establish that Mr. Pennue is guilty of any of those three offenses.

In order for the government to prove Mr. Pennue guilty of an offense, it must convince you, beyond a reasonable doubt, that it has proved each and every element of that offense. Possibilities or even probabilities are not sufficient.

If the government fails to prove any one or more elements of an offense beyond a reasonable doubt, then you must find Mr. Pennue not guilty of that particular offense.

On the other hand, if you are convinced, beyond a reasonable doubt, that all elements of an offense with which Mr. Pennue has been charged have been proven to you beyond a reasonable doubt, then you should find him guilty of that offense.

Reasonable Doubt

As I have said, the burden is upon the government to prove beyond a reasonable doubt

that Mr. Pennue is guilty of the charges made against him. It is a strict and heavy burden, but it does not mean that Mr. Pennue's guilt must be proven beyond all possible doubt. It does require that the evidence exclude any reasonable doubt concerning Mr. Pennue's guilt.

A reasonable doubt may arise not only from the evidence produced but also from a lack of evidence. Reasonable doubt exists when, after weighing and considering all the evidence, using reason and common sense, jurors cannot say that they have a settled conviction of the truth of the charge. On the other hand, reasonable doubt does not exist when, after weighing and considering all the evidence, using reason and common sense, jurors can say that they have a settled conviction of the truth of the charge.

Of course, Mr. Pennue should not be convicted on suspicion or conjecture. If, for example, you view the evidence in the case as reasonably permitting either of two conclusions — one that Mr. Pennue is guilty as charged, the other that Mr. Pennue is not guilty — then you must find Mr. Pennue not guilty.

It is not sufficient for the government to establish a probability, though a strong one, that a fact charged is more likely to be true than not true. That is not enough to meet the burden of proof beyond reasonable doubt. On the other hand, there are very few things in this world that we know with absolute certainty, and in criminal cases, the law does not require proof that overcomes every possible doubt.

Concluding my instructions on the burden, then, I instruct you that what the government must do to meet its heavy burden is to establish the truth of each part of each offense charged by proof that convinces you and leaves you with no reasonable doubt, and thus satisfies you that you can, consistently with your oath as jurors, base your verdict upon it. If you so find as to a particular charge against Mr. Pennue, you will return a verdict of guilty on that charge. If, on the

other hand, you think there is a reasonable doubt about whether Mr. Pennue is guilty of a particular offense, then you must give Mr. Pennue the benefit of the doubt and find Mr. Pennue not guilty of that offense.

Consider Each Count Separately

You must consider each count separately. The fact that you find the defendant guilty or not guilty on one count does not mean that you should find the defendant guilty or not guilty on any other count.

“On or About”

You will note the indictment charges that the offenses were committed "on or about" certain dates. The proof need not establish with certainty the exact date of the alleged offense. It is sufficient if the evidence in the case establishes beyond a reasonable doubt that the offense was committed on a date reasonably near the date alleged.

Overview of the Indictment

The indictment in this case charges Mr. Pennue with three separate counts – Counts 5, 6, and 7. There are no charges before you on any other counts. You are not to speculate about Counts 1, 2, 3 or 4.

In Count 5, Mr. Pennue is accused of knowingly and with the intent to defraud, passing, uttering, publishing, or attempting to pass, utter and publish, two altered **100 dollar** Federal Reserve Notes, which were altered to appear “black” to Undercover Agent Mitchell in violation of 18 U.S.C. §§ 2 and 472.

In Count 6, Mr. Pennue is accused of knowingly, with the intent to defraud, devising and intending to devise a scheme and artifice for obtaining money from Wendell Bradford by means of materially false and fraudulent pretenses, representations and promises, and in order to

execute the scheme, Mr. Pennue is accused of knowingly inducing Wendell Bradford to transport \$5,000 from Massachusetts to Providence for the purported purpose of converting black construction paper into genuine currency, in violation of 18 U.S.C. §§ 2 and 2314.

In Count 7, Mr. Pennue is accused of knowingly and with intent to defraud, passing, uttering, publishing, or attempting to pass, utter, publish, two altered **20 dollar** Federal Reserve Notes, which were altered to appear “black” to Wendell Bradford, in violation of 18 U.S.C. §§ 2 and 472.

Other Names Mentioned in the Indictment

You have heard the names of other individuals in this indictment and during this trial and although you may wonder what happened to those other individuals, you should not concern yourself with them, nor should you speculate about them.

Counts 5 and 7

In Counts 5 and 7, Mr. Pennue is accused of violating Sections 2 and 472 of Title 18 of the United States Code.

Section 2 provides that: (a) Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal; or (b) Whoever willfully causes an act to be done which if directly performed by him or another would be an offense against the United States, is punishable as a principal.

Section 472 provides, in relevant part, whoever, with intent to defraud, passes any altered obligation or other Security of the United States, shall be guilty of a crime.

I will now turn to a discussion of the law applicable to Counts 5 and 7.

Count 5 charges that or about October 20, 2011, Mr. Pennue, a/k/a “Sam,” and Anthony Chadheen, aka “Tony,” aiding and abetting each other, did knowingly and with intent to defraud,

pass two altered obligations of the United States, that is, two One Hundred Dollar Federal Reserve notes, which were altered to appear all black to Undercover Agent Mitchell, in violation of 18 U.S.C. §§ 2 and 472.

Count 7 charges that in or about October 2011, Mr. Pennue, a/k/a “Sam,” and Anthony Chadheen, aka “Tony,” aiding and abetting each other, did knowingly and with intent to defraud, pass two altered obligations of the United States to Wendell Bradford, that is, two twenty dollar Federal Reserve notes, which were altered to appear all black, in violation of 18 U.S.C. §§ 2 and 472.

For you to find Mr. Pennue guilty on Counts 5 and 7, you must be convinced that the government has proven each of these things beyond a reasonable doubt:

1. That Mr. Pennue passed or uttered falsely made, forged, counterfeited, or altered Federal Reserve notes;

or

that Mr. Pennue attempted to pass or utter falsely made, forged, counterfeited, or altered Federal Reserve notes;

2. That Mr. Pennue knew at the time that the federal reserve notes were falsely made, forged, counterfeited, or altered; and

3. That Mr. Pennue did so with the intent to defraud.

I instruct you as a matter of law that United States Currency is an obligation of the United States.

Count 6

In Count 6, Mr. Pennue is accused of violating Sections 2 and 2314 of Title 18 of the United States Code.

I have already laid out for you what Section 2 provides in my discussion of Counts 5 and 7.

Section 2314 provides in relevant part, that whoever having devised any scheme to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, induces any person to travel in interstate commerce in the execution or concealment of a scheme to defraud that person of \$5,000 or more.

Count 6 charges that in or about October 2011, Mr. Pennue and Anthony Chadheen, aiding and abetting each other, knowingly devised a scheme to defraud Wendell Bradford, by means of materially false and fraudulent pretenses, representations and promises, and in order to execute the scheme, Mr. Pennue and Anthony Chadheen, aiding and abetting each other, did knowingly induce Wendell Bradford to transport in interstate commerce, \$5,000 in genuine United States currency, from Massachusetts to Providence, Rhode Island, all in violation of 18 U.S.C. §§ 2 and 2314. For you to find Mr. Pennue guilty of this crime you must be convinced that the government has proven each of these things beyond a reasonable doubt:

First, that in or about October 2011, a scheme to defraud Wendell Bradford was devised by Mr. Pennue and others;

Second, Mr. Pennue used false and fraudulent pretenses;

Third, Mr. Pennue knowingly induced Wendell Bradford to transport currency having the value of \$5000 or more in interstate commerce from Massachusetts to Rhode Island in order to execute the scheme to defraud.

Definitions

I will now define a few of the terms used in instructing you on the Counts in this case.

To act with the “intent to defraud” means to deceive another in order to obtain money or

property.

To “alter” something means to change a thing without destroying the identity of the thing changed, or changing it into something else.

The term “scheme to defraud” means any plan or course of action to obtain money by deception. The term interstate commerce means travel between one state and another state.

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.

Aiding and Abetting

I have mentioned aiding and abetting in my instructions to you on each Count against Mr. Pennue. To “aid and abet” means intentionally to help someone else commit the charged crime. To establish aiding and abetting, the Government must prove beyond a reasonable doubt:

First, that someone else committed a crime; and

Second, that Mr. Pennue consciously shared the other person’s knowledge of the crime, intended to help him, and took part in the endeavor, seeking to make it succeed.

Mr. Pennue need not commit the crime, be present when it is committed, or be aware of the details of its execution to be guilty of aiding and abetting. However, 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 or mere association with another person committing a crime is not sufficient to support an aiding and abetting conviction. In addition, mere presence at the scene of the crime and knowledge that a crime is being committed are also not sufficient to establish a defendant’s guilt.

Method of Assessing Evidence

Now that you know what it is that the government must prove and the standard of proof to be applied, the next question is how do you determine whether the government has proved these things beyond a reasonable doubt?

Obviously, you must make your determination solely from the evidence properly before you and from all reasonable and legitimate inferences to be drawn from that evidence.

The evidence that is properly before you consists of:

1. The testimony of the witnesses; and
2. The exhibits that I have admitted into evidence.

From that evidence, you may draw whatever conclusions are reasonable under the circumstances.

The evidence that is properly before you does not include:

1. Comments or statements by the attorneys;
2. Documents, photographs or other items which may have been referred to but have not been admitted into evidence; or
3. Anything you may have heard or seen outside of this courtroom regarding the events in question or the participants in this case.

Witnesses - Credibility - General Factors

As to the testimony of witnesses, your principal task is to determine the credibility of the witnesses and the weight you will give to the testimony of each.

In making that determination, there are a number of factors that you may consider:

1. The opportunity or lack of opportunity the witness had to acquire knowledge of the facts about which the witness testified. In other words, was the witness in a position to have accurately perceived the facts that the witness related to you.
2. The reliability or unreliability of the witness's memory. In other words, did the witness have a clear recollection of what happened or was the witness's memory uncertain or unclear.
3. The witness's appearance on the stand. Did the witness appear to be a person who was telling the complete and unadulterated truth, or did it appear that the witness was slanting things one way or another either consciously or unconsciously.
4. The probability or improbability of the witness's testimony. Did what the witness had to say sound reasonable or plausible or did it appear to be highly unlikely or impossible.
5. Whether the witness had anything to gain or lose from the outcome of this case. In other words, was the witness totally impartial or did the witness have some stake in the outcome or some reason to favor one side or the other.

Impeachment of witness by prior conviction

You have heard evidence that a witness has been convicted of a crime. You may consider that evidence, together with other pertinent evidence, in deciding how much weight to give to that witness's testimony.

Government Agents

The fact that a witness may be employed by a law enforcement agency does not, by itself, mean that you should give that witness's testimony any greater or any lesser weight simply

because of that fact. You should assess the credibility and testimony of such a witness by applying the same factors as you would with respect to any other witness.

Undercover Agent

You have heard testimony that an undercover agent of the United States Secret Service worked undercover during this investigation. There is nothing illegal or improper with the government employing this technique. Whether or not you approve the use of an undercover agent to detect criminal acts is not to enter into your deliberation in any way. If you are satisfied beyond a reasonable doubt that Mr. Pennue committed the offenses charged in the indictment, the circumstance that the government made use of an undercover agent is irrelevant to your determination.

Witnesses - Number - Weight of Testimony

In evaluating the testimonial evidence, remember that you are not required to believe something to be a fact simply because a witness has stated it to be a fact and no one has contradicted what that witness said. If, in the light of all of the evidence, you believe that the witness is mistaken or has testified falsely or that he is proposing something that is inherently impossible or unworthy of belief, you may disregard that witness's testimony even in the absence of any contradictory evidence. You must decide which witnesses to believe and which facts are true. To do this, you must look at all the evidence, drawing upon your common sense and personal experience.

Just because there may be more witnesses testifying on one side of an issue than on the other does not mean that the weight of the evidence lies in favor of the greater number of witnesses. Once again, it is the credibility or quality of the testimony that determines where the weight of the evidence lies.

Exhibits

In addition to assessing the credibility of the witnesses and the weight to be given to their testimony, you should also evaluate the exhibits that you will have with you in the jury room. Examine them and consider them carefully.

However, bear in mind that merely because an exhibit has been admitted into evidence does not mean that you are required to accept it at face value. Like the testimony of a witness, the significance of an exhibit or the weight you attach to it will depend upon your evaluation of that exhibit in light of all the facts and circumstances of the case.

Direct and Circumstantial Evidence/Inferences

As I mentioned previously, you may consider only the evidence that is properly before you. However, that does not mean that, in determining the facts, you are limited to the statements of the witnesses or the contents of the exhibits.

In reaching your conclusions, you are permitted to draw, from facts that you find have been proven, such reasonable inferences as seem justified in the light of your experience. Inferences are deductions or conclusions which reason and common sense lead you to draw from facts, which have been established by the evidence in the case.

Such evidence is sometimes called circumstantial evidence. To put it another way, a fact may be proved either by direct evidence or by circumstantial evidence. Direct evidence includes such things as the testimony of an eyewitness who personally observed the fact in question or a photograph or document showing the actual thing described.

Circumstantial evidence consists of proof of a series of facts or circumstances from which the existence or nonexistence of another fact may be reasonably inferred. (Example: rain on the pavement.)

The law makes no distinction between the weight to be given to direct and circumstantial evidence. It is for you to decide how much weight to give any evidence. However, it does require that any fact required to convict a defendant be proven beyond a reasonable doubt.

Conduct of Court - General

As I have said before, it is up to you to determine the facts in this case. You should not interpret anything I have said or done during this trial as expressing an opinion on my part as to what the facts in this case are. I have not intended to express any such opinion and you should not be concerned about what my opinions might be regarding the facts. That is a matter for you to decide.

Objections by Counsel

During this trial, there have been occasions when the attorneys have objected to a question that was asked of a witness. You should not penalize an attorney, or more importantly, his client, for objecting. It is the attorney's right and duty to protect the client's interests by objecting to what the attorney may believe is evidence that does not satisfy the requirements of the rules of evidence.

If I sustained the objection, it is important that you not speculate about what the answer to the objected-to question might have been. By sustaining the objection, the Court has determined that the evidence should not be considered by you.

Bias and Prejudice

Neither bias in favor of any person or cause, prejudice against any person or cause, nor sympathy of any kind should be permitted to influence you in the course of your deliberations.

All that any party here is entitled to, or, for that matter expects, is a verdict based upon your fair, scrupulous and conscientious examination of the evidence before you and your application of the law as I have explained it to you.

Verdict - Unanimity Required

In order to return a verdict in this case, all twelve of you must agree as to what that verdict will be. You cannot return a verdict of either guilty or not guilty with respect to any charge against Mr. Pennue unless your decision is unanimous.

Therefore, there are two things that you should keep in mind during the course of your deliberations.

On the one hand, you should listen carefully as to what your fellow jurors have to say and should be open minded enough to change your opinion if you become convinced that it was incorrect.

On the other hand, you must recognize that each of you has an individual responsibility to vote for the verdict that you believe is the correct one based on the evidence that has been presented and the law as I have explained it. Accordingly, you should have the courage to stick to your opinion even though some or all of the other jurors may disagree as long as you have listened to their views with an open mind.

Foreperson and Duty to Deliberate

Juror # _____ will be the foreperson. She/He will preside over the deliberations and speak for you here in court.

You will discuss the case with your fellow jurors to reach agreement if you can do so. Your verdict must be unanimous, meaning all of you must agree. Each of you must decide the

case for yourself, but you should do so only after you have considered all of the evidence, discussed it fully with the other jurors, and listened to the views of your fellow jurors.

Do not be afraid to change your opinion during the course of the deliberations if the discussion persuades you that you should. Do not come to a decision simply because other jurors think it is right.

Communications with the Court

If it becomes necessary during your deliberations to communicate with me, you may send a note through Court Security Officer Palumbo, signed by the foreperson. No member of the jury should ever attempt to contact me except by a signed writing; and I will communicate with any member of the jury on anything concerning the case only in writing, or here in open court.

Return of Verdict

The Court has prepared a verdict form for you. After you have reached unanimous agreement on a verdict, your foreperson will fill in the form that has been given to you, sign it and date it, and advise the Court that you are ready to return to the courtroom.

Copy of Instructions

I have instructed you on the law that governs your deliberations. I will send into the jury room a written copy of my instructions.